UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/AC.26/2001/7
15 March 2001

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF "F3" CLAIMS

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GLOSSARY

"claimant"	Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an "F3" claim
"Commission" or "UNCC"	United Nations Compensation Commission
"decision"	A decision of the Governing Council of the Commission
"emergency period"	The period from 27 February 1991 until 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced
"expert consultants"	The expert accounting and loss adjusting consultants to the Panel (see paragraph 8 of the annex)
"F1" Panel"	The Panel of Commissioners appointed to review the "F1" claims, being certain government claims predominantly for losses related to departure and evacuation costs or damage to physical property, and claims filed by international organizations
"F3" claims"	The claims filed with the Commission under the Commission's claim form entitled "Claim Form for Governments and International Organizations" by the Government of the State of Kuwait, except those reviewed by the "F1" Panel and those which the Commission has classified as environmental claims (see paragraphs 1 and 2)

"Farah report"	"Report to the Secretary-General on the scope and nature of damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535)
"First "F3" Report"	"Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims" (S/AC.26/1999/24)
"First instalment claims"	Those claims considered by the Panel in the First "F3" Report
"Form F"	The Commission's claim form entitled "Claim Form for Governments and International Organizations"
"GCC" or "Gulf Cooperation Council"	Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates
"Government of Kuwait" or "Government"	The Government of the State of Kuwait
"Iraq"	The Government of the Republic of Iraq
"KERO"	Kuwait Emergency Reconstruction Office
"level of materiality"	See paragraphs 120 to 123 of the annex
"liberation"	The liberation on 26 February 1991 of the State of Kuwait from Iraq's invasion and occupation
"non-material items"	Those parts of the "F3" claims that fall below the level of materiality adopted by the Panel. See paragraph 120 of the annex

"occupation period"	The period from 2 August 1990 until 26 February 1991
"PAAC"	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression
"pre-paid rent"	See paragraph 83 of the annex
"principal claim amount"	See paragraph 4
"relief paid to employees"	See paragraph 45 of this Report and paragraph 32 of the annex
"Rules"	The Commission's Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10)
"second instalment claims"	See paragraph 3
"secretariat"	The secretariat of the Commission
"Social Security Fund"	See paragraph 45
"US$"	United States dollars

Introduction

1. At its twenty-eighth and thirty-third sessions, held from 29 June to 1 July 1998 and 28 to 30 September 1999, respectively, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed a Panel of Commissioners comprising Messrs. L. Yves Fortier (Chairman), Andrew Jarvyden and Helmut Sohl to review this second, and subsequent, instalments of those claims filed by the Government of the State of Kuwait (the "Government of Kuwait"), known as the "F3" claims.

2. The "F3" claims comprise all of the Government of Kuwait's claims, other than those reviewed by the "F1" Panel and those which the Commission has classified as environmental claims. The "F3" claims have been presented by the Government of Kuwait on behalf of its various Ministries and other entities. There are 62 such claims. Each claim seeks compensation for direct loss, damage or injury alleged to be a result of Iraq's invasion and occupation of Kuwait. [1]

3. The second instalment of the "F3" claims, comprising 21 claims (the "second instalment claims"), was submitted to the Panel on 14 September 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (the "Rules"). [2] This report contains the Panel's recommendations to the Governing Council on these claims, and is issued under article 38(e) of the Rules. The Panel intends to review the remaining "F3" claims in one further instalment.

I. OVERVIEW OF THE SECOND INSTALMENT CLAIMS

4. The second instalment claims seek compensation for losses totalling US$4,072,498,503 plus interest of US$726,928,049. The amount claimed in each claim is set out in the table below. The Panel will refer to the total amount claimed in each claim, excluding interest, as the "principal claim amount". The Panel's findings in respect of the second instalment claims (in section IV below) include a tabular breakdown of each second instalment claim that sets out the amounts claimed, including interest, and the amounts recommended.

Table 1. Summary of the second instalment claims

Claimant	Short name of claimant (if different)	UNCC claim number	Government claim number	Principal claim amount (US$) a/	Interest (US$)	Amount claimed including interest (US$)
Ministry of Finance - Kuwait Emergency and Recovery Program		5000018	1	533,472,120	84,770,912	618,243,032
Kuwait Institute for Scientific Research		5000039	3	390,343,692	62,027,217	452,370,909
Ministry of Public Works - Bayan Palace, Amiri Diwan, Telecommunications Tower, Audit Bureau, and MEW-MPW Headquarters construction and repair projects	Ministry of Public Works (Bayan Palace)	5000040	4	232,874,040	37,008,640	269,882,680
Ministry of Electricity and Water - Stores Department, Communications Systems, Emergency Electrical Department, Primary Substations, and Water Division	Ministry of Electricity and Water (Stores Department)	5000042	6	362,234,083	57,566,160	419,800,243
Ministry of Defense - Navy Fast Attack Craft	Ministry of Defense (Fast Attack)	5000110	12	483,440,514	76,827,960	560,268,474

Claimant	Short name of claimant (if different)	UNCC claim number	Government claim number	Principal claim amount (US$) a/	Interest (US$)	Amount claimed including interest (US$)
Ministry of Electricity and Water - Power Plants, Underground Cables and Overhead Lines Maintenance Department, Electrical Network Projects Construction Department, Shuwaikh Distillation Facilities, Salaries, and Computer Center	Ministry of Electricity and Water (Power Plants)	5000111	13	606,672,157	96,412,240	703,084,397
Ministry of Information - Dar al-Athar al-Islamiyya Collection	Ministry of Information	5000114	16	61,036,607	9,699,920	70,736,527
Ministry of Public Works - Mishref Neighborhood Center, Kuwait University, Old Sief Palace, Government Testing Center, Computers, Stores, Equipment, Furniture, Salaries	Ministry of Public Works (Mishref Neighborhood Center)	5000115	17	79,446,364	12,625,440	92,071,804
Ministry of Defense - Reconstruction of Naval Base and Support Facilities	Ministry of Defense (Naval Base)	5000139	22	63,453,966	10,083,880	73,537,846
Kuwait University - Tangible Property Losses and Payment or Relief to Others	Kuwait University	5000140	23	264,379,603	42,015,200	306,394,803

Claimant	Short name of claimant (if different)	UNCC claim number	Government claim number	Principal claim amount (US$) a/	Interest (US$)	Amount claimed including interest (US$)
Ministry of Oil		5000144	27	7,882,908	1,252,800	9,135,708
Kuwait Municipality		5000147	30	196,459,271	31,221,400	22 ,680,671
Ministry of Public Works - Buildings Construction Department, Local Roads Construction Department, Motorways Department, Sanitation Department, Buildings and Roads Maintenance, and Bubiyan Bridge	Ministry of Public Works (Buildings Construction Department)	5000159	31	177,026,963	28,133,480	205,160,443
Ministry of Health		5000164	36	422,193,464	67,095,560	489,289,024
Ministry of Planning		5000165	37	34,053,732	5,411,400	39,465,132
Environment Protection Council		5000166	38	4,136,255	657,720	4,793,975
Ministry of Communications - Real and Tangible Property, Contract Losses, Payment or Relief to Others	Ministry of Communications	5000173	45	229,638,928	36,710,520	266,349,448
Public Authority for Applied Education and Training		5000175	46	120,776,864	19,193,360	139,970,224
Public Authority for Agriculture Affairs and Fish Resources		5000187	55	46,921,883	7,456,480	54,378,363

Claimant	Short name of claimant (if different)	UNCC claim number	Government claim number	Principal claim amount (US$) a/	Interest (US$)	Amount claimed including interest (US$)
Ministry of Interior - Buildings, Coast Guard, Communications Equipment, Criminal Evidence Equipment, Computer Equipment, Traffic Department, Office Furniture and Equipment, Warehouses, Currency, and Emergency Offices	Ministry of Interior	5000189	57	154,618,335	24,556,040	179,074,375
Directorate General of Civil Aviation - Terminal 1, Communications Center and Other Buildings, Communications Equipment and Meteorological Equipment	Directorate General of Civil Aviation	5000191	59	101,946,774	16,201,720	118,148,494
Total				4,572,908,523	726,928,049	5,299,836,572

a/ The figures in this column are the starting point of the Panel's review, before any of the adjustments described in this report. They do not include any claims preparation costs. PAAC has filed a separate claim for such costs (UNCC Claim No. 5000193).

5. Having regard to the complexity of the issues raised, the volume of documentation, and the amount of compensation sought, the Panel has classified all the second instalment claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, thereby requiring the Panel to complete its review of these claims within a period of 12 months.

6. Given the nature of the second instalment claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1999. Iraq submitted a response to each of the second instalment claims except for that of the Directorate General of Civil Aviation.

II. PROCEDURAL HISTORY

7. In undertaking its review of the second instalment claims, the Panel has followed the procedures and applied the principles and decisions set out in sections II, III, IV and V of the First "F3" Report (found at paragraphs 6 to 125 (inclusive) of that report). For the ease of reference of the reader, those sections are repeated as the annex to this Report, and the paragraph numbers follow those of the First "F3" Report.

III. CONSIDERATION OF COMMON LEGAL ISSUES

8. In section IV of the First "F3" Report (repeated as section IV of the annex), the Panel considered issues that arose more than once in the first instalment claims. The second instalment claims raise certain further such issues and the Panel now turns to such common legal issues.

A. Property losses - including losses of military assets, those caused by Allied Coalition Forces' 3/ bombing and those resulting from the breakdown of civil order

9. At paragraphs 29 and 30 of the First "F3" Report (repeated as paragraphs 29 and 30 of the annex, respectively), the Panel found that the evidence submitted in support of the property losses in the first instalment claims was sufficient to demonstrate that the losses were "direct losses" and hence compensable, subject to verification and valuation. The Panel finds that the evidence submitted in support of the property losses in the second instalment claims is also sufficient to demonstrate that the losses were "direct losses".

10. Iraq's responses to Procedural Order 1 frequently assert that it should not be held responsible for property losses caused by:

(a) the bombing of Kuwait carried out by the Allied Coalition Forces during Iraq's invasion and occupation of Kuwait; or

(b) the breakdown of civil order due to the absence of legal authority following Iraq's withdrawal from Kuwait.

11. The Panel notes that paragraph 34(a) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of [m]ilitary operations ... by either side during the period 2 August 1990 to 2 March 1991". 4/ The Panel finds that the Governing Council in decision 7 has determined that losses arising out of the bombing of Kuwait by the Allied Coalition Forces during the period cited are "direct losses".

12. In relation to property losses caused by the breakdown of civil order due to the absence of legal authority following Iraq's withdrawal from Kuwait, the Panel notes that paragraph 34(d) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of ... [t]he breakdown of civil order in Kuwait or Iraq during" the period 2 August 1990 to 2 March 1991. The Panel finds that the Governing Council in its decision has determined that losses arising out of the breakdown of civil order in Kuwait or Iraq during the period cited are "direct losses".

13. Some of the second instalment claims seek compensation for the loss of, or damage to, the Government of Kuwait's military facilities and assets ("military assets"). 5/ Prima facie, such losses of property are compensable for the reasons set out in the preceding paragraphs.

14. However, Governing Council decision 19 6/ provides that "[t]he Governing Council confirms that the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". In light of this, the Panel now turns to consider whether the second instalment claims that seek compensation for the loss of, or damage to, military assets are compensable.

15. The Panel finds that the costs to the Government of its preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within Governing Council decision 19 and are accordingly not compensable. Having considered the nature and circumstances of the loss and damage to the Government of Kuwait's military assets referred to at paragraph 13 above, the Panel finds that such losses do not fall within the exclusion contemplated in Governing Council decision 19 and are accordingly compensable. An exception to this finding is discussed at paragraphs 265 to 268 below.

16. In light of the above, the Panel finds that the property losses claimed in the second instalment claims (including those in relation to military assets) are "direct losses" and hence compensable (an exception to this

finding is discussed at paragraphs 265 to 268 below), subject to verification and valuation. 7/

B. Accounting for depreciation in claims for property loss

17.The Government has presented a number of claims seeking compensation for loss or destruction of, or damage to, real and tangible property. As noted at paragraph 16 above, the Panel finds that such claims are, in principle, compensable.

18.Such claims are usually made for the cost of:

(a) replacement, in the case of lost tangible property;

(b) reconstruction, in the case of destroyed real property; or

(c) repair, in the case of damaged property, whether real or tangible.

19.The Panel notes that claimants usually applied deductions for depreciation only in the first two cases mentioned at paragraph 18 above (to reflect the longer useful life of the new property compared with that lost or destroyed). Claims made for the costs of repairs generally make no equivalent adjustment for depreciation, because the Government asserts that repairs do not generally extend the useful life of the property repaired. The Panel finds, however, that there are cases of repairs that have extended the useful life of the property (or part thereof) repaired and has made adjustments for inadequate accounting for depreciation in such cases.

C. Buildings not repaired or rebuilt

20.The Government has presented a number of claims seeking compensation for destroyed or damaged buildings, for which the claimant has not yet commenced the necessary reconstruction or repair. 8/

21.The Panel, applying the principles set out at paragraphs 65 and 66 of the First "F3" Report (repeated as paragraphs 65 and 66 of the annex, respectively), finds that Iraq is liable for the loss of or damage caused to the buildings as a direct result of Iraq's invasion and occupation of Kuwait, even if the claimant has not rebuilt the building or repaired the damage so caused. Accordingly, the loss of or damage to such buildings is compensable, subject to verification and valuation, and the Panel has recommended as compensation the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.

22. In appropriate cases, the Panel has made adjustments for inadequate accounting for depreciation and saved expenses. The latter adjustment is calculated as the maintenance and other expenses that were not incurred from the time of Iraq's invasion and occupation of Kuwait until such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.

D. Loss of research and information

23. The Government has presented a number of claims seeking compensation for the loss of research and information contained in records 9/ that were themselves lost as a direct result of Iraq's invasion and occupation of Kuwait ("lost information").

24. At paragraphs 474 to 476 of the First "F3" Report, the Panel recognised that there are two aspects to a claim for lost information - "the loss of materials such as paper and folders and ... the loss of ... the information contained [therein]". The Panel has verified and valued the loss of the materials in the manner described at paragraphs 109 to 115 of the First "F3" Report (repeated as paragraphs 109 to 115 of the annex) and now turns to the valuation of the information contained in those materials.

25. In most cases, the claimants seek the replacement cost of the lost information, itself measured as the costs of the initial creation of the information or the costs of re-creating the information after liberation. In each case, the loss was based on the historic labour and materials costs, save in a few instances in which post-liberation labour and materials costs were used. Adjustments were sometimes made to reflect the obsolescence of the lost information at the time of its loss and to account for inflation between the creation of the lost information and the date of loss.

26. The Panel notes that information is usually valued by reference to its market value - that is, a sale price or ascertainable future income stream. However, in most of the cases before it, the information does not have an ascertainable market value nor can it be replaced by purchase. Accordingly, the Panel finds that it is appropriate to value such losses of information by reference to labour and materials costs.

27. In each case, the Panel has considered whether adjustments to the amounts claimed should be made for obsolescence, inadequate accounting for depreciation and for the use that would have been made of the information if it had not been lost. Such adjustments are set out, in the standard manner, in the consideration of each of the second instalment claims below.

28.The Panel has also considered the extent to which the information lost can be recovered (such as from publications, patents and institutional knowledge), and any technological advancements, that allow the information lost to be re-created at a cost lower than that incurred for its initial creation. The Panel has used the shorthand expression "economies of re-creation", as further set out at paragraph 47 below, to denote adjustments made for such matters.

E. Work undertaken in the immediate post-liberation period

29.A number of second instalment claimants undertook repairs and procured items in the immediate post-liberation period when the prices of goods and services in Kuwait were, in general, higher than the norm. In accordance with the duty of mitigation, these repairs and procurements must be shown to have been carried out at a cost that was, in all the circumstances, the lowest reasonable cost. 10/

30.At paragraph 138 of the First "F3" Report, in discussing the claim of the Ministry of Finance in relation to the Kuwait Emergency Reconstruction Office ("KERO"), 11/ the Panel found that compensation would be recommended for the additional cost incurred by entering into a contract without recourse to competitive procurement procedures only if the contract was of such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances.

31.The Panel finds that the principles giving rise to that test should be applied to the repairs and procurements discussed in paragraph 29 above. That is, compensation should be recommended for the additional cost incurred by undertaking repairs or procuring items when prices of goods and services were, in general, higher than the norm to the extent that the repairs or procurements were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns to undertake such repairs or procurements.

F. Use of existing materials and labour for repair and reconstruction

32.Two second instalment claimants 12/ seek compensation for:

(a) the replacement cost of materials located in storage at the time of liberation and used in the repair of equipment or facilities damaged as a direct result of Iraq's invasion and occupation of Kuwait; 13/ and

(b) the salaries paid to existing employees referable to the time spent by them on repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait or in restoring operations disrupted as a direct result of Iraq's invasion and occupation of Kuwait. 14/

33. The Panel recommends that compensation be awarded for the materials and that the loss be valued by reference to their replacement cost.

34. The Panel finds that compensation should also be awarded in relation to the labour of the existing employees. The loss should be measured by reference to the value of the work that would have been performed by the employees had they been undertaking their normal duties instead of working on repair or restoring operations. The Panel has considered the valuation of each such loss in the context of the activities of the claimant concerned, the work normally performed by the employees, whether or not the claimant operated as a commercial entity, and whether or not the claimant has a loss of revenue claim or a loss of profits claim for all or part of the period covered by the claim for salaries. 15/

G. Contract interruption losses

35. There are a number of second instalment claims for contract interruption losses seeking compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses include the costs of site restoration and the additional costs of completing the contracts. 16/

36. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. In a number of claims, the site restoration costs include an amount for lost contractor's materials on site. Such materials had been delivered to the project site as at the date of Iraq's invasion and occupation of Kuwait, but had not yet been incorporated into the project concerned. The Panel, having considered the terms of the relevant contracts, finds that the Government was liable for such losses, and accordingly has recommended compensation for lost contractor's materials on site (subject to verification and valuation). 17/

37. In those cases in which the claimant has now entered into a post-liberation contract or intends to do so in the future, the Panel has valued the loss in accordance with the findings at paragraphs 63 and 64 of the First "F3" Report. 18/

38. In those cases in which the claimant has not entered into a post-liberation contract and does not demonstrate an intention to do so in the future, the Panel finds that the projects have been abandoned. In such cases, the Panel has considered the reasons why the projects were abandoned. The Panel has concluded that none of the projects under

consideration was abandoned as a direct result of Iraq's invasion and occupation of Kuwait.

39. The Panel has, however, applied the principles set out at paragraphs 65 and 66 of the First "F3" Report to such abandoned projects and finds that Iraq is liable for any damage caused to the project site as a direct result of its invasion and occupation of Kuwait, even if the claimant has decided not to repair the damage and resume the project. The Panel has valued the loss as the cost of repairing the damage measured at such time as it would be reasonable, in all the circumstances, to expect the repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 19/ The Panel finds that any other losses to Kuwait arise out of its independent decisions to abandon the projects concerned.

H. Uncollectible receivables

40. One claimant 20/ seeks compensation for uncollectible receivables, being sums owed to it at the time of Iraq's invasion and occupation of Kuwait that have not been repaid. These sums are owed by individuals, companies, businesses and Government departments and usually arose following the provision of services to those entities. 21/

41. The Panel recommends that no compensation be awarded in relation to sums owed:

(a) by Government departments, because there is no loss to the Government as a whole (the loss to the claimant is a saving for the debtor); 22/

(b) that would have been written off as irrecoverable under international accounting practice prior to Iraq's invasion and occupation of Kuwait; and

(c) in respect of work carried out, but lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait, the loss of which is claimed elsewhere. 23/

42. For the remaining uncollectible receivables, the Panel has recommended compensation only if the claimant has demonstrated that the receivable is uncollectible and that the debtor's inability to pay is a direct result of Iraq's invasion and occupation of Kuwait.

IV. THE SECOND INSTALMENT CLAIMS

A. Introduction

43.The Panel now turns to consider separately each of the second instalment claims. In this section the Panel sets out its consideration of the asserted losses and presents its recommendations for compensation in respect of them.

44.The Panel notes that a number of items of tangible property have been returned by Iraq to the Government pursuant to the United Nations Return of Property programme ("UNROP"). In a number of claims, the claimant has adjusted the amount claimed to account for the items returned. In making its recommendations, the Panel has considered the extent of any damage to such items, the value of such items and, if required, the cost to repair them, and has made further adjustment to the amounts claimed where necessary. The Panel's recommendations therefore account for the condition, value and repair costs (if any) of the items returned by Iraq to the Government pursuant to UNROP.

45.Some of the second instalment claims seek compensation for relief paid to Kuwaiti and/or GCC employees of the Government. The compensability of such claims is discussed at paragraphs 31 to 48 of the First "F3" Report (repeated as paragraphs 31 to 48 of the annex). The Panel noted, at paragraph 41 thereof, that the Government operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). Each employee contributes five per cent of his or her gross salary, which is deducted at source from the salary paid. The Panel has examined the evidence submitted and, where necessary, has requested the Government to confirm whether the amounts paid to the employees and claimed as relief paid to employees in the second instalment claims took into account the employees' contributions. In cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for, the Panel has made suitable adjustments to the amounts claimed. Such adjustments are set out in the consideration of the individual claims below.

46.The Panel notes that, during its occupation of Kuwait, Iraq requested employees to exercise their normal functions and that certain employees did work during the occupation period. Iraq has asserted, in its response to Procedural Order 1 in respect of certain claims, that it paid employees for such work from its own resources. In calculating the 60 per cent deduction from all claims for relief paid to employees, that is discussed at paragraph 48 of the First "F3" Report, the Panel made allowance for a certain level of payments made by Iraq for work carried out during the

occupation period. The Panel finds that the payments that Iraq asserts were made fall within such allowance.

47. In reporting on the verification and valuation of the first instalment claims, the Panel noted at paragraph 125 of the First "F3" Report that it sometimes uses one or more shorthand expressions to explain in any given case why a claim or part thereof has been reduced or rejected. In reporting on the verification and valuation of the second instalment claims, the Panel has continued to use those shorthand expressions and has found it necessary to add two further such expressions, as follows:

(a) "incorrect valuation of KERP assets" means that the amount claimed has been reduced because the assessment of residual value applied by the claimant to assets received pursuant to the Kuwait Emergency and Recovery Program 24/ is incorrect; and

(b) "economies of re-creation" means that the amount claimed in respect of information losses has been reduced so as to account for information that can be recovered (such as from publications, patents and institutional knowledge), and technological advancements, that allow the information lost to be re-created at a cost lower than that incurred for its initial creation.

48. The Panel has considered, and made where appropriate, all adjustments that it considers necessary to the amounts claimed for one or more of the reasons set out in paragraph 125 of the First "F3" Report and in paragraph 47 above. However, in reporting on the verification and valuation of the second instalment claims, the Panel has reported only those adjustments that fall above a de minimis level, which the Panel has established as one per cent of the total adjustments made by the Panel (for each claim or part thereof).

49. The Panel has made adjustments for "saved expenses", being one of the shorthand expressions set out in paragraph 125 of the First "F3" Report, and notes that such adjustments arise most commonly in relation to revenue and property losses, in which cases the expenses saved usually comprise operating expenses and (in the case of property losses) maintenance expenses. The period in respect of which expenses were saved extends for the period of loss (in the case of revenue losses or claims for extraordinary costs incurred) or from the date of loss until the date of repair, reinstatement or renewal (in the case of property or contract losses), save as otherwise noted.

50. The Panel has continued to apply the level of materiality set out at paragraph 121 of the First "F3" Report. In reporting on the verification and valuation of the second instalment claims, the Panel has confirmed, in

some cases by way of note to the relevant claim or part thereof, whether some or all parts of the claims fall below the level of materiality adopted by the Panel. The treatment of such non-material items is set out at paragraphs 120 to 123 of the First "F3" Report.

51. The Panel has reviewed the second instalment claims using amounts rounded to the nearest US$1,000. Therefore, all recommended compensation amounts are presented in multiples of US$1,000, except where the Panel recommends payment in full of any claim or part thereof.

B. Ministry of Finance - Kuwait Emergency and Recovery Program

Government Claim No. 1, UNCC Claim No. 5000018

Table 2. Summary Table for Ministry of Finance - Kuwait Emergency and Recovery Program

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Public services expenditure			
a) Medical supplies	34,318,517	34,318,517	61-63
b) Food and water	84,885,652	81,321,000	64-68
c) Fire fighting equipment	24,382,887	23,851,000	69-71
d) Bomb disposal equipment	15,361,130	11,060,000	72-75
e) Clearing of roads, unsafe buildings and rubble	13,097,823	7,767,000	76-79
f) Electrical equipment and natural gas	82,577,853	49,116,000	80-85
g) Communications equipment	77,837,166	57,835,000	86-90
h) Transportation vehicles	30,626,227	14,552,000	91-95
i) Emergency border control	51,920,662	50,769,000	96-99
j) Emergency equipment to re-open airport	8,901,600	2,715,000	100-104
k) Law enforcement for peacekeeping and restoring security	49,175,285	40,094,000	105-110
l) Emergency sanitation equipment	1,167,879	486,000	111-114
m) Shipping expenditure	43,633,542	43,633,542	115-117
n) KERP office expenses	15,585,897	14,791,000	118-122
Total	533,472,120	432,309,059	
Interest	84,770,912		

1. Public service expenditures - US$533,472,120

(a) Introduction

52. This claim is made for the costs incurred by the Government in relation to the Kuwait Emergency and Recovery Program ("KERP"), a procurement programme set up in December 1990 and managed by the Council of Ministers. KERP was initially operated from an office in Washington, D.C., United States of America and later moved to Dammam, Saudi Arabia. The purpose of KERP was to procure supplies of medicine, food, water, fire-fighting equipment, bomb disposal equipment, transportation vehicles and other goods and related services that the Government anticipated would be required following the liberation of Kuwait. The repair of some damaged facilities was also undertaken pursuant to KERP. The contracts for the vast majority of KERP's procurements of goods and services were entered into before

liberation. The remainder was entered into during the emergency period or shortly thereafter.

53.Before liberation, the Government was not able to identify its precise post-liberation needs. It therefore anticipated those needs based on discussions with those agencies of the Government that were to receive the goods and services (the "Receiving Agencies") and also based on a number of assumptions about the closing stages of military operations against Iraq and the post-liberation situation in Kuwait. 25/

54.The Government asserts that KERP's procurements either:

(a) were consumed during the emergency period (for example, food) or otherwise retained no value thereafter. The Panel will refer to such goods as "Consumed Goods";

(b) retained a value beyond the emergency period and were transferred to Receiving Agencies which had lost assets of a similar nature as a direct result of Iraq's invasion and occupation of Kuwait (for example, medical supplies not consumed during the emergency period were transferred to the Ministry of Health). The Panel will refer to such goods as "Transferred Goods"; or

(c) were purchases that the Government would not ordinarily have made but which were necessitated by Iraq's invasion and occupation of Kuwait (for example, the border control system discussed at paragraph 97 below). The Panel will refer to such purchases as "Exceptional Purchases".

55.The claim is presented by reference to fourteen categories of purchase, each of which the Panel considers separately, commencing at paragraph 61 below.

56.The Panel finds that the Government acted reasonably in entering into procurement contracts, in advance of liberation, based on its anticipated needs, and that the assumptions made and the assessment of Kuwait's needs were reasonable in the circumstances. The Panel also finds that the Government's purchases were in accordance with its assumptions and that the purchases of all the items comprising Exceptional Purchases were required as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds, therefore, that the amounts claimed are compensable, subject to verification and valuation.

57. In light of the allocation of the purchases into Consumed Goods, Transferred Goods and Exceptional Purchases, the Panel has approached the verification and valuation of each of the fourteen categories of claim applying the principles set out in section V of the First "F3" Report (repeated as section V of the annex) and by asking:

(a) whether the Consumed Goods were in fact consumed and, if so, whether it was reasonable for them to be so consumed. If the Consumed Goods were not in fact consumed, the Panel has sought to ascertain the value (if any) they retained at the end of the emergency period; 26/

(b) whether the Transferred Goods are accounted for in the claims of the Receiving Agencies 27/ including the extent to which they replaced goods lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait;

(c) whether the assertion that the Transferred Goods replaced goods of a similar nature lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait is sufficiently supported by the evidence presented; 28/ and

(d) whether the items constituting the Exceptional Purchases retained any value at the end of the emergency period and, if so, what account is to be taken of such value.

58. In each case where a Receiving Agency has accounted for the Transferred Goods in its claim, the Panel has considered whether the claim of the Receiving Agency reflects the correct residual value of the Transferred Goods. If not, the Panel has made an adjustment for "incorrect valuation of KERP assets" in the Receiving Agency's claim. 29/

59. Where the Receiving Agency has not accounted for the Transferred Goods in its claim, the Panel has sometimes found it necessary to make adjustments for enhancement, inadequate accounting for depreciation, inadequate accounting for residual value, saved expenses and overstatement in the present claim. The Panel has calculated these adjustments by reference to its estimate of the age and type of goods that the Transferred Goods replaced. The Panel has also found it necessary in such cases to make adjustments for insufficient evidence in the present claim to reflect a lack of support for the assertions that the Transferred Goods replaced goods of a similar nature lost as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has set out its findings in this regard in its discussion of the fourteen claim categories commencing at paragraph 61 below.

60.The Panel has considered the method adopted for the selection of contractors and sub-contractors to provide the goods and services. In accordance with the duty of mitigation, the Government must show that the KERP procurements and works were carried out at the lowest reasonable cost in all the circumstances. The Panel finds that the contractors and sub-contractors were chosen using competitive procurement procedures, including the selection of the lowest acceptable bid, and therefore that the method adopted, and prices paid, were reasonable. 30/

(b) Medical supplies - US$34,318,517

61.The Government procured medical supplies and equipment such as pharmaceuticals, ambulances, blood banks, dental surgery equipment and diagnostic imaging equipment.

62.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items. The remaining purchases were Transferred Goods that were accounted for in the claim of the Ministry of Health.

63.In light of the above, the Panel recommends payment in full in the amount of US$34,318,517.

(c) Food and water - US$84,885,652

64.The Government procured food and water supplies such as bottled water, water delivery trucks, an emergency water treatment facility, potable water storage tanks, reverse osmosis units, office equipment to support the distribution of water, and food rations. It also contracted for the design and implementation of an emergency water treatment facility.

65.The Panel finds that the majority of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

66.Some of the items purchased were Transferred Goods that were accounted for in the Receiving Agencies' claims.

67.The potable water storage tanks, reverse osmosis units, office equipment to support the distribution of water, and the contract for the design and implementation of an emergency water treatment facility were Exceptional Purchases. The Panel finds that an adjustment should be made for inadequate accounting for residual value in relation to the reverse osmosis units and the office equipment.

68.In light of the above, the Panel recommends compensation in the amount of $81,321,000 out of the US$84,885,652 claimed.

(d) Fire-fighting equipment - US$24,382,887

69.The Government procured fire-fighting equipment such as trucks, hoses and suits.

70.All of the purchases were Transferred Goods. While the vast majority of the purchases were accounted for in the Receiving Agencies' claims, some were not. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

71.In light of the above, the Panel recommends compensation in the amount of US$23,851,000 out of the US$24,382,887 claimed.

(e) Bomb disposal equipment - US$15,361,130

72.The Government procured bomb disposal equipment such as metal detectors, protective clothing and vehicles equipped to withstand bomb blasts.

73.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

74.The remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

75.In light of the above, the Panel recommends compensation in the amount of US$11,060,000 out of the US$15,361,130 claimed.

(f) Procurements for emergency clearing of roads, unsafe buildings and rubble - US$13,097,823

76.The Government procured heavy equipment such as trucks, tractors, graders and compactors, and also undertook some building repairs.

77.The Panel finds that the purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

78.In relation to the building repairs, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

79.In light of the above, the Panel recommends compensation in the amount of US$7,767,000 out of the US$13,097,823 claimed.

(g) Electrical equipment and natural gas - US$82,577,853

80.The Government procured items for the generation of electricity such as equipment for power stations, 245 emergency power generators and 16 mobile floodlight towers. It also undertook some repairs to the electricity network (including to transmission lines) and procured an emergency supply of natural gas.

81.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

82.The Panel finds that some of the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

83.The 245 emergency power generators and the 16 mobile floodlight towers were Exceptional Purchases. The Panel finds that an adjustment should be made for inadequate accounting for residual value in relation to them.

84.In relation to the repairs to the electricity network (including transmission lines), the Panel finds that adjustments should be made for depreciation, saved expenses and insufficient evidence.

85.In light of the above, the Panel recommends compensation in the amount of US$49,116,000 out of the US$82,577,853 claimed.

(h) Communications equipment - US$77,837,166

86.The Government procured communications equipment such as transportable satellite communications equipment, generators and radios.

87.The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

88.The Panel finds that the majority of the remaining purchases were of Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

89.The Panel finds that some of the amounts claimed, which relate to the installation and servicing of emergency communications facilities, comprised Exceptional Purchases and recommends that compensation in full be awarded for such purchases.

90.In light of the above, the Panel recommends compensation in the amount of US$57,835,000 out of the US$77,837,166 claimed.

(i) Transportation vehicles - US$30,626,227

91.The Government procured a variety of transportation vehicles, spare parts and tools, and traffic equipment such as barriers and signs.

92.The Panel notes that of the vehicles purchased, 85 are not accounted for in either the present claim or in a Receiving Agency claim, in that the Government has not submitted any evidence as to their use during the emergency period nor thereafter. The Government asserts that the vehicles were involved in traffic accidents but has provided no evidence to support that assertion. As a result, the Panel does not recommend any compensation for the amount claimed for the 85 vehicles.

93.In its response to Procedural Order 45 issued in March 2000, the Government stated that the Kuwait Public Transport Co. was the Receiving Agency for 285 of the vehicles and a quantity of spare parts and the Kuwait Ports Authority was the Receiving Agency for 17 of the vehicles. That portion of the claim referable to these 302 vehicles and the spare parts has therefore been severed and transferred to the "E4" Panel of Commissioners, which is considering the claims of these two Receiving Agencies. 31/

94.The Panel finds that the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

95.In light of the above, the Panel recommends compensation in the amount of US$14,552,000 out of the US$30,626,227 claimed.

(j) Emergency border control system - US$51,920,662

96. The Government procured border control equipment such as hardware, software and photographic equipment. It also procured the services of consultants to design and implement border control systems.

97. Over US$37 million of the amount claimed relates to the development, installation and operation of a new border control system which allowed the Government to ascertain whether those in Kuwait and those seeking to enter Kuwait after liberation were entitled to live in Kuwait. It also provided a single form of identification. The Panel recommends that compensation in full be awarded in respect of this Exceptional Purchase.

98. The Panel finds that the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

99. In light of the above, the Panel recommends compensation in the amount of US$50,769,000 out of the US$51,920,662 claimed.

(k) Emergency equipment to re-open the Kuwait Airport - US$8,901,600

100. The Government procured emergency equipment to re-open the Kuwait Airport such as X-ray inspection equipment and a radar station. It also undertook emergency repairs to some of the Kuwait Airport facilities.

101. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

102. The Panel finds that the majority of the remaining purchases were Transferred Goods, none of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

103. In relation to the repairs to some of the Kuwait Airport facilities, the Panel finds that adjustments should be made for insufficient evidence.

104. In light of the above, the Panel recommends compensation in the amount of US$2,715,000 out of the US$8,901,600 claimed.

(l) Law enforcement equipment for peace-keeping and restoring security - US$49,175,285

105. The Government procured law enforcement equipment such as guns, ammunition, uniforms, boats and vehicles. It also undertook some emergency repairs to police stations and a prison.

106. The claim presented in respect of one of these procurement contracts exceeds the relevant contract price. In its response to Procedural Order 36 issued in January 2000, the Government stated that it did not have evidence to support this excess and the Panel has made the appropriate adjustment. In its response to Procedural Order 46 issued in May 2000, the Government stated that the amount claimed for the boats was, in fact, duplicated by the claim of the Ministry of Interior considered at paragraphs 711 to 715 below. The Panel has therefore excluded the amount claimed in respect of the boats.

107. The Panel finds that the vast majority of the purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

108. In relation to the repairs to the police station and prison, the Panel finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

109. The Panel finds that some of the amounts claimed, which relate to the provision of temporary accommodation, were Exceptional Purchases and recommends that compensation in full be awarded for such purchases.

110. In light of the above, the Panel recommends compensation in the amount of US$40,094,000 out of the US$49,175,285 claimed.

(m) Emergency sanitation equipment - US$1,167,879

111. The Government procured emergency sanitation equipment such as furniture, office equipment and cleaning agents.

112. The Panel finds that the cleaning agents were Consumed Goods and recommends that compensation in full be awarded for such items.

113. The Panel finds that the remaining purchases were Transferred Goods, none of which were accounted for in the Receiving Agency's claim. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation and insufficient evidence.

114. In light of the above, the Panel recommends compensation in the amount of US$486,000 out of the US$1,167,879 claimed.

(n) Shipping expenditures for the emergency equipment - US$43,633,542

115. The Government claims the costs incurred in transporting the items procured to Kuwait.

116. The Government contracted with one contractor to undertake the logistical co-ordination of the Government's transportation requirements. The contractor then chose sub-contractors to undertake the transportation itself. As set out at paragraph 60 above, the Panel finds that the selection of the contractor and its selection of sub-contractors was undertaken using competitive procurement procedures with the selection of the lowest acceptable bid 32/ and therefore that the method adopted, and prices paid, were reasonable.

117. In light of the above, the Panel recommends payment in full in the amount of US$43,633,542.

(o) KERP office support and logistics - US$15,585,897

118. The Government seeks compensation for office and other costs incurred to administer KERP such as rent, salaries, legal and accounting costs, and the costs of administering and organising payment for the KERP procurements.

119. The Panel finds that the decision to operate the offices in Washington, D.C. and Dammam was reasonable in the circumstances and, applying the principles set out at paragraph 79 of the First "F3" Report, that the reasonable cost of operating the offices is compensable.

120. In addition, the Panel finds that the reasonable legal and accounting costs and costs of administering and organising payments are compensable, as such services were an integral part of the KERP procurements.

121. The Government also claims the cost of three buses that were used by high-ranking officials of the Government during the emergency period. They were fitted with conference, communications and command-control facilities, which enabled the officials to move around Kuwait and inspect damage and direct the recovery, while allowing contact to be maintained with the military, civil servants, diplomats and other Governments. In its response to Procedural Order 46 issued in May 2000, the Government asserted that the buses replaced buses of a similar value lost by the Government as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the Government's assertion is insufficiently supported by the evidence

presented and that the buses are not accounted for in any other claim. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

122. In light of the above, the Panel recommends compensation in the amount of US$14,791,000 out of the US$15,585,897 claimed.

C. Kuwait Institute for Scientific Research

Government Claim No. 3, UNCC Claim No. 5000039

Table 3. Summary Table for Kuwait Institute for Scientific Research

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	11,124,538	8,658,000	123-128
Other tangible property			
a) Equipment	43,964,017	15,667,000	129-133
b) Doha Reverse Osmosis Plant	25,078,873	7,663,000	134-136
c) NSTIC library collection	9,175,889	3,333,000	137-140
d) Products of research and development	195,417,000	54,967,000	141-147
e) Unique scientific items	7,116,500	0	148-149
f) Staff housing furniture	807,508	283,000	150
Sub-total	281,559,787	81,913,000	
Contract			
a) Loss under the contract with Burgan Contracting Co	1,254,699	0	151-155
b) Loss under other contracts	1,511,250	0	156-164
Sub-total	2,765,949	0	
Business transaction or course of dealing			
a) Lost contract income (post-invasion)	32,462,485	0	165-169
Other losses			
a) Costs of rebuilding KISR organization	36,695,525	a/	170-176
b) Additional training costs due to loss of experienced personnel	9,746,894	a/	170-176
c) Additional business development costs	3,344,519	a/	170-176
d) Cost of additional computer training	339,825	a/	170-176
e) Cost of restoration of administrative software	1,532,281	a/	170-176
Sub-total	51,659,044	9,900,000	
Payment or relief to others	10,771,889	4,228,000	177-184
Total	390,343,692	104,699,000	
Interest	62,027,217		

a/ Loss elements subsumed into the method of valuation adopted by the Panel. Breakdown of amount recommended by loss element not possible.

1. Real property - US$11,124,538

123. The Kuwait Institute for Scientific Research ("KISR") conducts scientific research in the fields of agriculture, fisheries, water resources, petroleum and other energy technology, and environmental science and economics. KISR claims that during Iraq's invasion and occupation of Kuwait, many of its facilities were destroyed and others severely damaged. 33/

124. KISR seeks compensation for such damage and destruction. The claim is made for the costs of repair and reconstruction, including the costs incurred in retaining external consultants to conduct a comprehensive damage assessment survey.

125. In a technical mission to Kuwait undertaken in June 1999, certain KISR facilities were inspected on behalf of the Panel.

126. The amounts claimed in respect of the costs incurred for the damage assessment survey fall below the level of materiality adopted by the Panel. The Panel finds that an adjustment should be made to this part of the claim for insufficient evidence.

127. So far as the remainder of the claim is concerned, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

128. In light of the above, the Panel recommends compensation in the amount of US$8,658,000 out of the US$11,124,538 claimed.

2. Other tangible property - US$281,559,787

(a) Equipment - US$43,964,017

129. KISR claims for the loss of various types of equipment, comprising experimental equipment, machinery, boats, office furnishings and transportation equipment, all of which it claims was lost during Iraq's invasion and occupation of Kuwait.

130. KISR calculated the replacement cost of the items lost by using a price index, which estimated the percentage difference between asset prices in its ledger and replacement cost, using samples of purchases of replacement items traced through to pre-invasion records. KISR applied a measure of depreciation to the replacement costs thereby derived. The Panel finds that this method of calculation was a reasonable one in the circumstances, but that KISR underestimated the depreciation adjustments required, and has made an adjustment for such inadequate accounting for depreciation.

131. The Panel also finds that adjustments should be made for enhancement, overstatement, saved expenses and insufficient evidence.

132. The Panel has made a further adjustment of US$5,185,000, being the amount of a post-liberation donation provided by the Government of Japan to be used by KISR for the replacement of scientific instruments lost as a direct result of Iraq's invasion and occupation of Kuwait. 34/

133. In light of the above, the Panel recommends compensation in the amount of US$15,667,000 out of the US$43,964,017 claimed.

(b) Doha Reverse Osmosis Plant - US$25,078,873

134. KISR seeks compensation for the damage to and loss of elements of the reverse osmosis plant at the Doha water desalination facility. KISR claims that specialised osmosis equipment was damaged or dismantled and removed. After liberation only 10 per cent of the equipment was still usable.

135. The Panel finds that adjustments should be made for enhancement, overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

136. In light of the above, the Panel recommends compensation in the amount of US$7,663,000 out of the US$25,078,873 claimed.

(c) NSTIC library collection - US$9,175,889

137. KISR seeks compensation for the loss of its library collection. 35/

138. In its response to Procedural Order 1, Iraq asserted that it had returned various books to Kuwait. The Panel finds that Iraq's assertion is not substantiated.

139. The Panel finds that adjustments should be made for enhancement, inadequate procurement process, inadequate accounting for depreciation and insufficient evidence.

140. In light of the above, the Panel recommends compensation in the amount of US$3,333,000 out of the US$9,175,889 claimed.

(d) Products of research and development - US$195,417,000

141. KISR seeks compensation for lost information, such as computer records, reports, specimens and the results of experiments. The claim is made for the loss of information compiled during the seven years prior to Iraq's invasion and occupation of Kuwait. 36/ The claim is based on the labour and materials costs (including the costs of technical support) invested in research and development, segregated according to KISR's six primary research and development divisions, namely, food resources, environmental resources, water resources, engineering, petroleum and petrochemicals, and technology and economics.

142. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information.

143. KISR has valued its claim as the loss of the investment it made in research and development in each of the divisions described above, as measured by the historic costs of that investment. KISR adjusted that value to account for information remaining after liberation and information that no longer retained significant value as at 2 August 1990. The Panel accepts this method of valuation, but finds that certain costs that were not associated with research and development projects should be excluded. The Panel has made the necessary adjustment, together with a further adjustment for arithmetical errors.

144. The Panel has also considered the extent to which the claim should be adjusted for economies of re-creation. KISR's premises were inspected on the Panel's behalf and the technical mission found that some pre-invasion publications and papers were available. The Panel has made adjustments to reflect the inadequate accounting for the availability of that pre-invasion information and of copies of applications (but not the underlying research data) for 29 patents, for technological advancements in computers, diagnostic equipment and scientific machinery, and for general institutional knowledge available to KISR.

145. The Panel has considered the level of support that KISR's central technical support section would have to provide to the research and development divisions. The value of such support is measured by KISR as the cost of providing technical support to these divisions, again adjusted to account for information remaining after liberation and information that no longer retained significant value as at 2 August 1990. The Panel accepts that methodology, but finds that a further adjustment to the amount claimed should be made to correct an overstatement in the value applied and to reflect the lower value of the investment in research and development after application of the adjustment for economies of re-creation.

146. The Panel finds that a further adjustment should be made for insufficient evidence.

147. In light of the above, the Panel recommends compensation in the amount of US$54,967,000 out of the US$195,417,000 claimed.

(e) Unique scientific items - US$7,116,500

148. KISR seeks further compensation for the loss of "unique scientific items". Such items include seed banks, genetically selected animal herds, fish breeders and satellite photos, the costs of creation of which are claimed within the loss of "products of research and development" at paragraphs 141 to 147 above. KISR asserts that these items, being unique, have a value greater than the historic costs of creating them. KISR further asserts that the items by their nature are irreplaceable and has therefore made a claim for the excess of their value over the cost of their creation, as estimated by KISR's scientists.

149. The Panel does not accept that the estimates of additional value for the "unique scientific items" are sufficient to demonstrate that the items did in fact retain a value in excess of the cost of their creation. The Panel therefore does not recommend any compensation in respect of the amount claimed for the lost "unique scientific items".

(f) Staff housing furniture - US$807,508

150. KISR seeks compensation for the loss of furniture purchased for the use of staff members at the accommodation provided to them. The Panel finds that adjustments should be made for method of valuation, inadequate accounting for depreciation, saved expenses and insufficient evidence and recommends compensation in the amount of US$283,000 out of the US$807,508 claimed.

3. Contract - US$2,765,949

(a) Loss under the contract with Burgan Contracting Co - US$1,254,699

151. KISR claims that, prior to Iraq's invasion and occupation of Kuwait, it had negotiated a price with the Burgan Contracting Company ("Burgan") to perform construction work at its marine and fishery facility in Salmiya, and that the contract had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait.

152. KISR claims that, after liberation, Burgan refused to enter into a contract for the work at the price originally agreed. Following a

competitive procurement procedure, KISR concluded a contract for the relevant work with a different contractor, at a price higher than that originally agreed with Burgan, but lower than Burgan's post-liberation price. KISR claims the difference between the costs incurred under the post-liberation contract and the price originally agreed with Burgan.

153. The Panel finds, in accordance with the general principles set out in the First "F3" Report, that if no formal contract had been concluded at the time of Iraq's invasion and occupation of Kuwait, compensation for contract interruption losses should be awarded only where there is evidence of consensus at the time of Iraq's invasion as to the essential provisions of the contract, namely the identification of the parties, the principal undertakings and the price to be paid. 37/

154. The Panel sought to establish whether or not such consensus existed, by Procedural Orders Nos. 7 and 27 issued in September 1999 and November 1999, respectively. In its responses, KISR stated that no written agreement was concluded with Burgan, although Burgan had submitted a binding tender that KISR planned to accept subject to "the final concurrence of its engineering consultants". KISR also explained that the consultants had not yet submitted a final recommendation to KISR for the selection of the successful tender, nor had they prepared the final tender documents for signature.

155. The Panel accordingly finds that in this case no formal contract was in existence, nor was there sufficient evidence of consensus so as to satisfy the test set out above. Accordingly, the Panel does not recommend any compensation for the loss claimed.

(b) Loss under other contracts - US$1,511,250

156. KISR seeks compensation for general contractual debts and staff debts. The losses sustained in respect of general contractual debts arise under various small contracts for laboratory tests carried out for companies, businesses and Government organizations as well as under a contract for research services. The amounts claimed are those outstanding under the contracts as at 2 August 1990, and comprise invoiced and uninvoiced progress payments for on-going research projects.

157. As set out at paragraph 41 above, the Panel does not recommend any compensation for those debts that are owed by Government organizations.

158. In accordance with the principles set out at paragraph 42 above, the Panel recommends that compensation be awarded for the remaining general contractual debts only to the extent that KISR has demonstrated that the

debts are uncollectible and that the debtors' inability to pay is a direct result of Iraq's invasion and occupation of Kuwait.

159. The Panel sought information in Procedural Orders Nos. 7 and 37, issued in September 1999 and January 2000, respectively, with respect to the attempts that were made to collect the outstanding debts and why those that remained uncollected had not been collected.

160. In its responses, KISR stated, inter alia, that it had only attempted to collect general contractual debts for which documentation was available and that in most cases non-Governmental parties did not respond to letters of demand. The main reasons advanced for non-payment were the following:

(a) lack of documentation evidencing the debt;

(b) that the payment had been made but no proof of payment had survived Iraq's invasion and occupation of Kuwait;

(c) that the research had been started but not completed due to Iraq's invasion and occupation of Kuwait or had not been started at all;

(d) that the customers' requirements had changed following liberation; or

(e) that the debtors were unable to pay because their own activities had diminished as a result of Iraq's invasion and occupation of Kuwait.

161. As to those debts in respect of which the relevant research was interrupted or did not commence, the Panel finds that the losses are subsumed in KISR's claims for lost information and loss of revenue respectively, discussed at paragraphs 141 to 147 above and 165 to 169 below, respectively.

162. Having considered the information submitted by KISR, the Panel finds that KISR has not demonstrated that any of the remaining debts are uncollectible. 38/

163. KISR also seeks compensation for losses sustained in respect of debts owed by former members of staff. KISR submits that it did not take any steps to recover these debts because the collection costs would have exceeded the amounts at stake, and so claims the outstanding sums as a reasonable cost of mitigation. The Panel finds that KISR has not sufficiently mitigated its loss in failing to take any steps to recover the debts concerned.

164. In light of the above, the Panel does not recommend any compensation in respect of the amounts claimed.

4. Business transaction or course of dealing - US$32,462,485

(a) Lost contract income (post-invasion) - US$32,462,485

165. Prior to Iraq's invasion and occupation of Kuwait, KISR derived a portion of its income from providing research and development services to private companies and Government organizations. KISR claims that its contract revenues fell below what it would have received but for Iraq's invasion and occupation of Kuwait. The claim is made for the resultant loss of revenue, from 2 August 1990 until 30 June 1996. KISR asserts that such loss of revenue did not lead to a reduction in costs and therefore that loss of revenue is a net loss.

166. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments, and for saved expenses. 39/ The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait at least until 30 June 1996.

167. The Panel sought information in Procedural Order 7 issued in September 1999, inter alia, as to the contract income received for the years 1993 to 1999, and the proportion of the revenue generated from 1984 to 1999 that was derived from other Government departments. In its response, KISR stated that its contract income would have increased post-liberation (applying the pre-invasion trend) and gave details of the proportion of its income derived from other Government departments. The Panel finds that notwithstanding the possibility that KISR's contract income would have increased, the proportion thereof derived from other Government departments would have remained at pre-invasion levels, which the Panel finds exceed two thirds of all contract income. The Panel has made an adjustment to the amount claimed to reflect such intra-Government revenue.

168. Finally, the Panel sought information from KISR as to the costs involved in the generation of its revenue. The information provided by KISR disclosed that the expenses that would have been incurred in earning the remaining lost revenue for the period 2 August 1990 to 30 June 1996 exceeded that lost revenue.

169. In light of the above, the Panel does not recommend any award of compensation in respect of the amounts claimed.

5. Other losses - US$51,659,044

(a) Cost of rebuilding KISR organization - US$36,695,525

(b) Additional training costs due to loss of experienced personnel - US$9,746,894

(c) Additional business development costs - US$3,344,519

(d) Cost of additional computer training - US$339,825 40/

(e) Cost of restoration of administrative software - US$1,532,281

170. KISR asserts that, as a direct result of Iraq's invasion and occupation of Kuwait, the organization was effectively destroyed.

171. For the first year following liberation, KISR claims that almost all activities of its staff were devoted to assessing the damage suffered by KISR and re-creating the organization and seeks compensation for its consequent losses. The claim is valued on the basis of the salaries paid to employees for its estimate of the man-hours that, absent Iraq's invasion and occupation of Kuwait, would have been devoted to research activities but which, in fact, were devoted to the above tasks, and of KISR's operating costs for the first year following liberation.

172. The Panel finds that the losses are compensable, subject to valuation and verification.

173. The Panel finds KISR's loss should be valued as the loss of productivity sustained by KISR during the first year following liberation, being the research which KISR staff would have produced had they not devoted their time to re-creation activities. Applying the principles set out at paragraph 34 above, the Panel has estimated the loss of productivity as a percentage of the employees' time and quantified it by reference to KISR's operating costs over that period.

174. KISR seeks further compensation for the costs incurred in providing additional training, additional business development costs, and for the costs of restoring its administrative software, some of which costs were incurred as many pre-invasion employees did not return after liberation. The Panel finds that the losses are compensable, but has made adjustments to exclude the costs consequent upon the failure of employees of certain nationalities to return. 41/ The Panel also finds that the compensable losses extended up to 30 June 1998, and has therefore assessed the losses for the items described above until that date, calculated as the loss of the man-hours that would have been devoted to research and development absent Iraq's invasion and occupation of Kuwait.

175. The Panel finds that adjustments should be made for method of valuation, overstatement and insufficient evidence.

176. In light of the above, the Panel recommends compensation in the amount of US$9,900,000 out of the US$51,659,044 claimed.

6. Payment or relief to others - US$10,771,889

177. KISR seeks compensation in the amount of US$10,771,889 for relief paid to its Kuwaiti employees, comprising salaries, incentive bonuses, 42/ holiday pay and rent paid on employees' accommodation, in each case for the seven-month occupation period.

178. In its response to the Panel's requests for information, KISR confirmed that incentive bonuses and holiday pay formed standard parts of all the Kuwaiti employees' annual salary packages.

179. The response of the Government to the Panel's questions regarding the Social Security Fund 43/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement. However, the Panel notes that KISR is further seeking compensation as a separate head of claim for such social security contributions. 44/ The Panel recommends, in accordance with paragraph 41 of the First "F3" Report (repeated as paragraph 41 of the annex), that no compensation be awarded for such sums.

180. As regards the salary packages, as set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

181. As regards that part of the claim seeking compensation for pre-paid rent on housing, the claim is made for the period during which the employees could not occupy the properties.

182. The Panel recommends, in accordance with paragraphs 83 to 85 of the First "F3" Report, that compensation be awarded for that portion of the pre-paid rent referable to the period that KISR was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the period in this case is 2 August 1990 to 28 February 1991.

183. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

184. In light of the above, the Panel recommends compensation in the amount of US$4,228,000 out of the US$10,771,889 claimed.

D. Ministry of Public Works (Bayan Palace)

Government Claim No. 4, UNCC Claim No. 5000040

Table 4. Summary Table for Ministry of Public Works (Bayan Palace)

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Contract			
a) Bayan Palace	24,206,337	8,720,000	188-190
b) Amiri Diwan	58,053,197	12,094,000	191-193
c) Telecommunications Tower	30,462,037	23,418,000	194-197
d) Audit Bureau	4,716,242	1,962,000	198
e) MPW/MEW headquarters	19,796,513	5,333,000	199-202
Sub-total	137,234,326	51,527,000	
Real property			
a) Bayan Palace residences	25,528,540	13,015,000	206-208
b) Bayan Palace conference building	51,496,679	30,235,000	209-211
c) Bayan Palace temporary conference facilities	3,170,728	2,616,000	212-213
Sub-total	80,195,947	45,866,000	
Other tangible property			
a) Bayan Palace residences	8,226,502	5,702,000	214-216
b) Bayan Palace conference building	5,994,716	1,605,000	217-219
c) Bayan Palace temporary conference facilities	1,222,549	428,000	220-224
Sub-total	15,443,767	7,735,000	
Total	232,874,040	105,128,000	
Interest	37,008,640		

1. Contract - US$137,234,326

(a) Introduction

185. The Ministry of Public Works ("MPW") is responsible for the construction and maintenance of the Government's public assets such as roads, sewers and buildings.

186. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 45/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

187. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Bayan Palace - US$24,206,337

188. MPW asserts that eight contracts for the design and construction of buildings at the Bayan Palace were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above.

189. One contract, for the supply of furniture and finishes for the buildings, had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. In addition, at the time MPW submitted its claim, it had not entered into a post-liberation contract. MPW claims the difference between its estimate of what the contract price would have been had the contract been finalised and its estimate of the price of the anticipated post-liberation contract. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of this pre-invasion arrangement and so does not recommend any compensation in respect of it.

190. In light of the above, the Panel recommends compensation in the amount of US$8,720,000 out of the US$24,206,337 claimed.

(c) Amiri Diwan - US$58,053,197

191. MPW asserts that fourteen contracts for the design and construction of five major buildings and several smaller ones for the Amiri Diwan were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above.

192. In addition, two contracts, for mechanical works and a conveying system, respectively, had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract prices would have been had the contracts been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

193. In light of the above, the Panel recommends compensation in the amount of US$12,094,000 out of the US$58,053,197 claimed.

(d) Telecommunications tower - US$30,462,037

194. MPW asserts that two contracts for the design and construction of a telecommunications tower and adjacent buildings were interrupted by Iraq's invasion and occupation of Kuwait.

195. One of the post-liberation contracts required the contractor to provide approximately thirty six more personnel than would have been required in the absence of Iraq's invasion and occupation of Kuwait. MPW asserts that some of these additional personnel were required to replace approximately 20 MPW employees who did not return after liberation. The Panel finds that the employment of these additional personnel was not a direct result of Iraq's invasion and occupation of Kuwait, particularly given that the post-liberation contract was not entered into until August 1993. It therefore does not recommend any compensation for their cost. However, the Panel recommends that compensation be awarded for the remaining additional personnel because they were required to supervise site restoration works that were necessary as a direct result of Iraq's invasion and occupation of Kuwait.

196. In addition, MPW and the construction contractor were negotiating variation orders to incorporate certain design changes into the project at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the price of the works pursuant to the variation orders would have been had the variation orders been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

197. In light of the above, and incorporating the Panel's calculation of the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above, the Panel recommends compensation in the amount of US$23,418,000 out of the US$30,462,037 claimed.

(e) Audit Bureau - US$4,716,242

198. MPW asserts that two contracts for the construction of headquarters for the State Audit Bureau were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above

and, accordingly, recommends compensation in the amount of US$1,962,000 out of the US$4,716,242 claimed.

(f) MEW-MPW headquarters - US$19,796,513

199. MPW asserts that two contracts for the construction of adjacent headquarters for itself and the Ministry of Electricity and Water were interrupted by Iraq's invasion and occupation of Kuwait.

200. One of the post-liberation contracts was concluded with a design consultant who had been engaged before Iraq's invasion and occupation of Kuwait. Amongst other things, this contract purported to ensure that the consultant remained liable for any claims arising from defects in its original design and required the redesign of the headquarters' interiors. The Panel finds that a further contract was not required to ensure the contractor remained liable for claims arising from defects in its original design and so does not recommend any compensation for the costs so incurred. Further, the Panel finds that the redesign of the headquarters' interiors was not a direct result of Iraq's invasion and occupation of Kuwait.

201. The Panel also notes that the costs claimed for site restoration include the costs of producing a damage assessment report on the relevant project site. This damage assessment report incorporated findings regarding the destruction of temporary offices that were, in fact, the responsibility of the contractor. The Panel finds that an adjustment should, in principle, be made so as to reflect the cost of that portion of the damage assessment report referable to the temporary offices. However, the Panel finds that to require the contractor to undertake a damage assessment report on the temporary offices would, in the circumstances of the need for the Government to undertake an assessment of the damage at the project site, be too technical and rigid an approach. 46/ The Panel therefore recommends that compensation be awarded for the entire cost of the damage assessment report, including that part referable to the temporary offices, provided that the contractor has not made a duplicate claim. The Panel is satisfied that the sub-contractor has not made a duplicate claim.

202. In light of the above, and incorporating the Panel's calculation of the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above, the Panel recommends compensation in the amount of US$5,333,000 out of the US$19,796,513 claimed.

2. Real property - US$80,195,947

(a) Introduction

203. As further set out below, MPW asserts that loss and damage were occasioned to various buildings and their contents in the Bayan Palace, including three of the residences used as accommodation by visitors to the Bayan Palace. 47/ MPW further claims the cost of constructing and furnishing a temporary conference facility, which it asserts was required so that Kuwait could host the annual GCC summit in December 1991. The hosting of the summit by Kuwait had been planned before Iraq's invasion and occupation of Kuwait. The existing conference building at the Bayan Palace could not be used because it was damaged.

204. The Panel finds that the Government's decision to host the GCC summit as planned does not break the chain of causation between Iraq's invasion and occupation of Kuwait and the construction and furnishing of the temporary conference facility. Further, it was reasonable, given the nature of the activities carried on at the Bayan Palace, 48/ that a temporary facility be built in place of the damaged conference building. 49/ Compensation should therefore be awarded for the cost of constructing and furnishing the temporary conference facility. 50/

205. The Panel notes that the construction and furnishing of the temporary conference facility and the repair and re-furnishing of the residences were undertaken in the immediate post-liberation period when the prices of goods and services in Kuwait were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for secure conference facilities and accommodation for the purposes of the GCC summit, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

(b) Bayan Palace residences - US$25,528,540

206. MPW seeks compensation for the cost of repairs to the residences discussed above.

207. The Panel finds that, although not all of the contracts for repair were awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs. However, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

208. In light of the above, the Panel recommends compensation in the amount of US$13,015,000 out of the US$25,528,540 claimed.

(c) Bayan Palace conference building - US$51,496,679

209. MPW seeks compensation for the cost of repairs to the conference building in the Bayan Palace.

210. The Panel finds that, although a contract for supervision and damage assessment was not awarded using competitive procurement procedures, the cost incurred was reasonable and the absence of such procedures did not lead to increased costs. However, adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

211. In light of the above, the Panel recommends compensation in the amount of US$30,235,000 out of the US$51,496,679 claimed.

(d) Bayan Palace temporary conference facilities - US$3,170,728

212. MPW claims the cost of constructing the temporary conference facility discussed above, adjusted to take account of its estimated residual value at the time the conference building was fully repaired. While the Panel agrees with this method of valuation, it finds that an adjustment should be made for insufficient evidence.

213. In light of the above, the Panel recommends compensation in the amount of US$2,616,000 out of the US$3,170,728 claimed.

3. Other tangible property - US$15,443,767

(a) Bayan Palace residences - US$8,226,502

214. MPW seeks compensation for the loss of, and damage to, tangible property such as furniture and interior decorating accessories and works of art from the Bayan Palace residences discussed above. 51/

215. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

216. In light of the above, the Panel recommends compensation in the amount of US$5,702,000 out of the US$8,226,502 claimed.

(b) Bayan Palace conference building - US$5,994,716

217. MPW seeks compensation for the loss of tangible property such as furniture and interior decorating accessories from the Bayan Palace

conference building. The Panel finds that the cost of replacement was less than the amount claimed by MPW and therefore that an adjustment should be made for overstatement. Adjustments should also be made for saved expenses and insufficient evidence.

218. The Panel agrees with MPW's method of calculating depreciation. However, the Panel finds that as a result of the overstatement of the cost of replacing the tangible property, MPW has also overstated the deduction required for depreciation. The Panel has therefore re-calculated the deduction to be applied for depreciation.

219. In light of the above, the Panel recommends compensation in the amount of US$1,605,000 out of the US$5,994,716 claimed.

(c) Bayan Palace temporary conference facilities - US$1,222,549

220. MPW seeks compensation for the cost of providing furniture for the temporary conference facilities.

221. The Panel finds that a deduction should be made equal to the value of those items of furniture that were suitable for use as replacements for the items of furniture lost from the Bayan Palace conference building. The Panel has, at paragraph 219 above, recommended compensation for the furniture lost from the Bayan Palace conference building.

222. MPW claims the cost of purchasing the furniture, adjusted to take account of its estimated residual value at the time the conference building was fully repaired. The Panel agrees with this method of valuation. However, as a result of the adjustment set out at paragraph 221 above, the deduction for the residual value of the furniture should be lower than that submitted by MPW. The Panel has therefore recalculated the deduction to be applied for residual value.

223. The Panel finds that an adjustment should also be made for insufficient evidence.

224. Accordingly, the Panel recommends compensation in the amount of US$428,000 out of the US$1,222,549 claimed.

E. Ministry of Electricity and Water (Stores Department)

Government Claim No. 6, UNCC Claim No. 5000042

Table 5. Summary Table for Ministry of Electricity and Water (Stores Department)

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	270,116,078	172,992,000	225-229
Real property			
a) Communication systems	12,213,250	2,820,000	230-233
b) Emergency electrical department	8,083,960	2,597,000	234-238
c) Primary substations	553,722	240,000	239-243
d) Water division	44,392,319	29,605,000	244-247
Sub-total	65,243,251	35,262,000	
Contract			
a) Communications systems	4,710,082	4,182,865	250-252
b) Water division	22,164,672	3,266,000	253-257
Sub-total	26,874,754	7,448,865	
Total	362,234,083	215,702,865	
Interest	57,566,160		

1. Other tangible property - US$270,116,078

(a) Stores department - US$270,116,078

225. The Ministry of Electricity and Water ("MEW") is responsible for the provision of electricity and water in Kuwait.

226. MEW seeks compensation for the loss or destruction of spare parts, tools and other equipment from various storage areas in Kuwait.

227. MEW claims compensation for the entire pre-invasion contents of a number of storage areas notwithstanding that all such contents were not, in fact, completely lost or destroyed. MEW asserts that the items remaining after liberation were worthless because they consisted of incomplete or damaged parts. The Panel finds, however, that the contents remaining at store number 8 at Subhan Central Stores had some salvage value and that an appropriate adjustment should therefore be made.

228. The Panel also finds that adjustments should be made to reflect an error made by MEW in calculating its claim, for shrinkage (that is, pilferage or erroneous bookkeeping) that would have occurred in the absence of Iraq's invasion and occupation of Kuwait, and for insufficient evidence.

229. In light of the above, the Panel recommends compensation in the amount of US$172,992,000 out of the US$270,116,078 claimed.

2. Real property - US$65,243,251

(a) Communications systems - US$12,213,250 52/

230. MEW seeks compensation for the loss of, and damage to, the communications systems linking its control centres with its major electrical power stations and substations.

231. MEW states that it has decided not to replace some of the equipment that was lost because of budgetary constraints or because the equipment has been made obsolete by new technology. The Panel, consistent with the decision set out at paragraphs 65 to 66 of the First "F3" Report (repeated as paragraphs 65 to 66 of the annex), finds that the loss of such equipment is nonetheless compensable and has valued the loss as the cost of replacing the equipment at such time as it would be reasonable, in all the circumstances, to expect replacement to have taken place. However, the Panel finds that adjustments should be made for saved expenses, the fact that some of the equipment not replaced was obsolete, inadequate accounting for depreciation and insufficient evidence.

232. For the equipment that has been replaced or repaired, the Panel finds that adjustments should be made for saved expenses and insufficient evidence.

233. In light of the above, the Panel recommends compensation in the amount of US$2,820,000 out of the US$12,213,250 claimed.

(b) Emergency electrical department - US$8,083,960 53/

234. MEW seeks compensation for the cost of repairing damage to its overhead lines and underground cables.

235. MEW's claim includes the estimated replacement cost of items that were taken from MEW's stores and used for the repairs. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

236. MEW's claim also includes the estimated cost of undertaking repairs that had not been performed at the time the claim was submitted to the Commission. MEW has now provided information on the repairs that were subsequently undertaken and the Panel finds that an adjustment should be made to correct an overstatement in MEW's estimate.

237. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

238. In light of the above, the Panel recommends compensation in the amount of US$2,597,000 out of the US$8,083,960 claimed.

(c) Primary substations - US$553,722 54/

239. MEW asserts that many of its primary substations were damaged or destroyed. This claim is made only for repairs overseen by the Primary Substation Maintenance Department. The other repairs to the primary substations are considered at paragraphs 284 to 289 below.

240. Some of the repairs required were performed by MEW's existing employees. The Panel has valued the loss as set out at paragraph 34 above, and finds that the value of the work that these particular employees would have performed if they had not worked on the repairs is equivalent to the amount of their salaries.

241. As set out at paragraph 33 above, the Panel recommends that compensation be provided for the items taken from MEW's stores and used for the repairs.

242. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

243. In light of the above, the Panel recommends compensation in the amount of US$240,000 out of the US$553,722 claimed.

(d) Water division - US$44,392,319 55/

244. MEW seeks compensation for damage to its water supply facilities, including pipes, pumps and reservoirs.

245. At the time it submitted its claim, MEW had not commenced the replacement of five destroyed reservoirs. Its claim was based on the cost incurred in constructing similar reservoirs in 1979 with adjustments for inflation and depreciation. While the Panel accepts this method of valuation, it notes that MEW's claim asserts that three of the destroyed reservoirs will be replaced with one larger reservoir. The Panel finds that an adjustment should be made to reflect the lower overall costs of this approach.

246. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

247. In light of the above, the Panel recommends compensation in the amount of US$29,605,000 out of the US$44,392,319 claimed.

3. Contract - US$26,874,754

(a) Introduction

248. In respect of the projects set out below, MEW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 56/ In the latter case, MEW asserts that the additional costs are to cover increased costs in the post-liberation period.

249. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Communications systems - US$4,710,082 57/

250. MEW asserts that a contract for the construction of a district control centre at Jahra was interrupted by Iraq's invasion and occupation of Kuwait. There was no additional cost in completing the contract after liberation, so the Panel has calculated only the amount of the loss claimed attributable to site restoration costs. 58/

251. The Panel finds that the site restoration costs equal the amount claimed and therefore recommends payment in full in the amount of US$4,182,865 for the interruption of this contract.

252. MEW also asserts that a contract for the maintenance of a district control centre in the "Town" section of Kuwait City was interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the loss claimed that is attributable to the factors set out at paragraph 249 above and finds that it is exceeded by the amount that MEW saved on maintenance of the district control centre for the period from the date of Iraq's invasion of Kuwait until the contract was restarted. Accordingly, the Panel does not recommend any compensation for the interruption of this contract.

(c) Water division - US$22,164,672 59/

253. MEW asserts that 23 contracts in relation to the repair, maintenance, construction or upgrade of MEW's water network were interrupted by Iraq's invasion and occupation of Kuwait.

254. Work under seven of the contracts has not yet been resumed. 60/ However, the Panel finds that these contracts will all be resumed at some stage and therefore recommends compensation in accordance with paragraph 37 above.

255. For those contracts that have been restarted, the Panel has calculated the amount of the losses claimed attributable to the factors set out at paragraph 249 above.

256. Four of the interrupted contracts were for routine maintenance works on a number of facilities. The Panel finds that the amount that would have been spent on the routine maintenance of those facilities for the period from 2 August 1990 until the contracts were restarted exceeds the costs attributable to the factors set out at paragraph 249 above for the contracts. As a result, the Panel recommends that no compensation be awarded for the interruption of these contracts.

257. In light of the above, the Panel recommends compensation in the amount of US$3,266,000 out of the US$22,164,672 claimed.

F. Ministry of Defense (Fast Attack)

Government Claim No. 12, UNCC Claim No. 5000110

Table 6. Summary Table for Ministry of Defense (Fast Attack)

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property			
a) The stolen ships	425,516,000	46,557,000	258-264
b) War related maintenance costs for the Al-Sanbouk and the Istiglal	52,709,162	14,271,000	265-271
c) Specialized spare parts purchases for the Al-Sanbouk and Istiglal long refit.	5,215,352	3,129,000	272-274
Total	483,440,514	63,957,000	
Interest	76,827,960		

1. Other tangible property - US$483,440,514

(a) The stolen ships - US$425,516,000

258. The Ministry of Defense ("MoD") seeks compensation for the loss of six ships of the Kuwait Navy that it asserts were seized by Iraq shortly after its invasion and occupation of Kuwait. MoD claims that the ships were taken to an Iraqi naval base where the Iraqi Navy used them as warships to patrol the Persian Gulf. MoD states that it believes that all the ships were destroyed during the course of the military operations against Iraq pursuant to Security Council resolution 678 (1990). The Panel accepts that the ships were lost, probably as a result of bombing by the Allied Coalition Forces.

259. In its original claim, MoD valued the loss of its ships on the basis of replacement cost as estimated by the original shipbuilder located in Germany. In a supplemental submission of claim filed in May 1998, MoD stated that the lost ships had been replaced with eight smaller ships supplied by a French manufacturer at a price in excess of the original estimated replacement cost, but no consequential amendment was made to the amount claimed. The Panel has therefore valued the loss on the basis of the original estimated replacement cost.

260. The Panel notes that the replacement cost estimate relied upon by MoD was obtained from the original shipbuilder, and without competitive procurement procedures. The Panel finds that the market for such ships is intensely competitive, and that it is normal practice for the purchase of

such ships to be put out to tender on a worldwide basis. The Panel is satisfied that there were more than 15 shipbuilders who were capable of supplying the ships at the relevant time, and therefore that the use of competitive procurement procedures would have led to substantially lower offer prices. The Panel has therefore made an adjustment, for an inadequate procurement process, to the amount claimed.

261. As a result of the adjustment made by the Panel in the preceding paragraph in respect of the inadequate procurement process, the Panel finds that the deduction MoD applied against the amount claimed in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to a lower replacement cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

262. The Panel is satisfied that the ships would have required annual maintenance and at least two long refits over their life (estimated by MoD at 25 years). The costs of undertaking such maintenance are significant, as demonstrated by the amounts claimed for the long refits in respect of the 2 surviving ships considered at paragraphs 265 to 271 below. Accordingly, the Panel finds that an adjustment should be made for the maintenance expenses saved.

263. The Panel finds that a further adjustment should be made for insufficient evidence.

264. In light of the above, the Panel recommends compensation in the amount of US$46,557,000 out of the US$425,516,000 claimed.

(b) War related maintenance costs for the Al-Sanbouk and the Istiglal - US$52,709,162

265. MoD seeks compensation for repair and overhaul costs for the Al-Sanbouk and Istiglal missile ships. The claim is based on the costs paid to the ships' manufacturer for the repair and overhaul work on the Al-Sanbouk and the estimated cost of such work for the Istiglal. MoD claims the proportion of the cost of the repair and overhaul work that it would have been able to accomplish internally, but for Iraq's destruction of the maintenance facilities at Kuwait's naval base (the "Base"). 61/

266. Each of these ships was on routine patrol when Iraq occupied the Base and was ordered by Kuwait Naval Command to Bahrain from where both were operated until liberation. As part of its verification and valuation of the claim, the Panel instructed the secretariat and the expert consultants to inspect the Al-Sanbouk and the Istiglal on the Panel's behalf. This inspection was carried out during a technical mission to Kuwait undertaken in June 1999.

267. The repair and overhaul work was required due to a lack of maintenance during the occupation period and accelerated wear rates arising from the additional usage while the ships were operating out of Bahrain. The Panel finds that any costs arising from the additional usage are military costs within Governing Council decision 19 and are therefore not compensable. 62/ The Panel finds, however, that the costs arising from the lack of maintenance are direct losses and are therefore compensable.

268. The repairs to, and overhaul of, the Al-Sanbouk were carried out as part of a long refit of the ship which was overdue. A long refit comprises the disassembly of the ship, the refurbishment of all major components and the overhaul of the ship's structure. The Panel has considered whether the additional usage increased the cost of the long refit and finds that, given the comprehensive nature of a long refit, any such increase was negligible. 63/ Accordingly, no adjustment under Governing Council decision 19 for military costs is required.

269. MoD asserts that prior to Iraq's invasion and occupation of Kuwait it had the facilities and personnel to carry out a significant part of the long refit of the Al-Sanbouk and identifies 60 per cent by value of the long refit contract as representing its pre-invasion maintenance capacity. However, the Panel notes that MoD had not previously carried out a long refit on the Al-Sanbouk, although the Panel accepts that MoD had undertaken at least one annual refit on each vessel prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that although MoD may have been capable of doing some of the work involved in the long refit, 60 per cent by value overstates the capacity lost. Accordingly, the Panel finds that an adjustment should be made for overstatement to the amount claimed for repair and overhaul work in this regard.

270. In respect of the estimated cost claimed for the Istiglal, the Panel finds that given the lapse of time since its last annual refit, a long refit is overdue. However, since the majority of the repairs to the facilities at the Base have now been completed, MoD would be able to undertake all the work on a long refit that it would have been able to undertake prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel does not recommend any compensation in respect of the amount claimed.

271. In light of the above, the Panel recommends compensation in the amount of US$14,271,000 out of the US$52,709,162 claimed.

(c) Specialized spare parts purchases for the Al-Sanbouk and Istiglal long refit - US$5,215,352

272. MoD seeks compensation for the loss of its general store of spare parts as well as several electronic and armament components, which, it asserts, were being held for installation on the Al-Sanbouk and Istiglal. MoD asserts that the replacements for these components had to be specially purchased for the long refit of the Al-Sanbouk and in anticipation of similar work being performed on the Istiglal. The Panel has made investigations as to the type of spare parts lost and the parts supplied by the contractor in the long refit of the Al-Sanbouk and finds no evidence of duplication between the claims for the war-related maintenance costs discussed above and the claim for specialised spare parts relating to the Al-Sanbouk.

273. The Panel finds, however, that an adjustment should be made for insufficient evidence.

274. In light of the above, the Panel recommends compensation in the amount of US$3,129,000 out of the US$5,215,352 claimed.

G. Ministry of Electricity and Water (Power Plants)

Government Claim No. 13, UNCC Claim No. 5000111

Table 7. Summary Table for Ministry of Electricity and Water (Power Plants)

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property			
a) Power plants	107,852,784	53,601,000	275-278
b) Underground cables and overhead lines maintenance department	14,055,563	4,413,000	279-283
c) Electrical networks projects construction department	404,590,493	217,055,000	284-289
d) Shuwaikh distillation facilities	41,837,834	31,541,000	290-293
Sub-total	568,336,674	306,610,000	
Payment or relief to others	36,221,863	14,230,000	294-298
Other tangible property	2,113,620	615,000	299-311
Total	606,672,157	321,455,000	
Interest	96,412,240		

1. Real property - US$568,336,674

(a) Power plants - US$107,852,784 64/

275. MEW seeks compensation in relation to five power stations. It asserts that four were damaged and one destroyed as a result of Iraq's invasion and occupation of Kuwait. 65/

276. The damage to one power station, at Doha West, included the destruction of its control centre. MEW's inspection of the turbines and generators of the power station did not reveal any damage. In order to provide some emergency power to the relevant region, MEW installed a temporary control system and re-started the generation facility at the power station. Damage to a turbine and generator was then caused by a failure of part of the oil system. This failure would have been detected by the destroyed control centre, but the temporary control system did not monitor the oil system. The Panel finds that MEW's actions before re-starting the generation facility at the power station were reasonable in the circumstances and recommends that compensation be awarded for all the damage to the Doha West power station, including that to the turbine and generator.

277. MEW's claim makes an allowance for depreciation only in the case of the repairs to the Shuaiba South power station. The Panel finds, however, that adjustments should be made for inadequate accounting for depreciation in relation to all of the repairs to the power stations. 66/ The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

278. In light of the above, the Panel recommends compensation in the amount of US$53,601,000 out of the US$107,852,784 claimed.

(b) Underground cables and overhead lines maintenance department - US$14,055,563

279. MEW seeks compensation for the cost of the repairs to its overhead lines and underground cables that were undertaken by the above-captioned department.

280. MEW's claim includes the estimated replacement cost of items that were taken from MEW's stores and used for the repairs. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

281. MEW's claim also includes the estimated cost of undertaking repairs that had not been performed at the time the claim was submitted to the Commission. MEW has now provided information on the repairs that were subsequently undertaken and the Panel finds that an adjustment should be made to correct an overstatement in MEW's initial estimate.

282. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

283. In light of the above, the Panel recommends compensation in the amount of US$4,413,000 out of the US$14,055,563 claimed.

(c) Electrical networks projects construction department - US$404,590,493 67/

284. MEW asserts that the above-captioned department managed 63 contracts for the inspection, repair, replacement and reconstruction of MEW's primary substations and other electrical network facilities.

285. Some of the repairs performed were to facilities on Failaka Island. The Panel finds that the repairs were undertaken before the Government decided to abandon Failaka Island and therefore recommends compensation based on the cost of the repairs undertaken. 68/

286. MEW's claim includes the replacement cost of items that were taken from MEW's stores and used for the repairs on Failaka Island. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

287. Not all of the contracts were awarded using competitive procurement procedures and some were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 138 of the First "F3" Report and paragraph 31 above, the Panel finds that, in light of Kuwait's need rapidly to restore its critical electrical supply and distribution systems, the works were of such urgency that MEW could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns.

288. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

289. In light of the above, the Panel recommends compensation in the amount of US$217,055,000 out of the US$404,590,493 claimed.

(d) Shuwaikh distillation facilities - US$41,837,834

290. MEW asserts that a power station and a desalination complex (consisting of seven separate desalination plants) were damaged by bombing and lack of normal maintenance. However, due to their age at the time of Iraq's invasion and occupation of Kuwait, MEW decided not to repair the power station 69/ or four of the desalination plants. The claim is therefore submitted only in relation to the three remaining desalination plants.

291. The repair of the desalination plants was undertaken by the sole contractor who responded to the tender documents issued. The Panel finds that, given the importance of the provision of fresh drinking water to the people of Kuwait, it was reasonable for MEW to proceed without re-tendering the work.

292. However, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

293. In light of the above, the Panel recommends compensation in the amount of US$31,541,000 out of the US$41,837,834 claimed.

2. Payment or relief to others - US$36,221,863

(a) Relief paid to employees - US$36,221,863

294. MEW seeks compensation in the amount of US$36,221,863 for relief paid to employees. 70/

295. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

296. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

297. The Panel finds that an adjustment should also be made for insufficient evidence.

298. In light of the above, the Panel recommends compensation in the amount of US$14,230,000 out of the US$36,221,863 claimed.

3. Other tangible property - US$2,113,620

(a) Computer centre - US$2,113,620 71/

299. MEW asserts that computer equipment and peripherals, computer software, office equipment and furniture, and records were lost from its computer centre.

300. The largest element of MEW's claim for its computer centre relates to a lost Unisys A9 mainframe computer.

301. MEW asserts that it took time to assess the losses and plan for the restoration of the centre. As a result, MEW did not immediately replace the Unisys A9. Instead, it leased a Unisys A6 in March 1992.

302. In August 1993, MEW installed an IBM AS/400-F35 mainframe computer, which is less powerful than a Unisys A9. From early 1994 to early 1995, MEW undertook a first upgrade to the IBM AS/400-F35. During the rest of 1995, MEW undertook a second upgrade to the IBM AS/400-F35. Upon the completion of these two upgrades, the computer was the equivalent of an IBM AS/400-F60. The Panel finds that the functionality of an IBM AS/400-F60 is superior to the lost Unisys A9.

303. MEW claims the cost of leasing the Unisys A6 from March 1992 until August 1993, the cost of the IBM AS/400-F35 and the two upgrades to it, the

cost of consultants to install and configure the IBM AS/400-F35, and the cost of consultants to install and configure the two upgrades to the IBM AS/400-F35.

304. The Panel recommends that compensation be awarded for the cost of leasing the Unisys A6 because the decision to lease and then buy was a reasonable one in the circumstances. 72/ The Panel also finds that the cost of purchasing, installing and configuring a replacement Unisys A9 in August 1993 would have exceeded the costs incurred by purchasing, installing and configuring the IBM AS/400-F35 and the two upgrades to it. Furthermore, the work undertaken by the consultants could not have been performed by MEW's pre-invasion staff.

305. The Panel therefore recommends that compensation be awarded for the costs set out at paragraph 303 above, with adjustments for enhancement, saved expenses and insufficient evidence.

306. The Panel notes that MEW's claim makes an allowance for depreciation of the computer equipment and peripherals, based on its estimate of the expected useful life and age of each item. The Panel finds that such a depreciation adjustment is required, but MEW overestimated the expected useful life of the lost Unisys A9. Further, account should be taken of the benefit MEW received from the use of the temporary Unisys A6 pending the purchase of a permanent replacement for the lost Unisys A9. The cumulative effect of all the Panel's adjustments, including that referred to above for enhancement, is that there is a reduction in the depreciation adjustment applied by MEW.

307. Two further elements of the claim for the lost computer centre comprise the costs of consultants employed to:

(a) restore the computer system that manages MEW's stock; and

(b) undertake a post-liberation stock check.

308. The Panel recommends that compensation be awarded for the cost of restoring the computer system that manages MEW's stock because the destruction of the system was a direct result of Iraq's invasion and occupation of Kuwait and the restoration work could not have been performed by MEW's pre-invasion staff. However, an adjustment should be made for insufficient evidence.

309. The Panel recommends that no compensation be awarded for the cost of the post-liberation stock check because the work would have been necessary in the absence of Iraq's invasion and occupation of Kuwait and, in any event, could have been performed by MEW's existing staff.

310. The amounts claimed for the remainder of MEW's claim under this loss type, being for office equipment and furniture, fall below the level of materiality adopted by the Panel. The Panel finds that adjustments to the claim for office equipment and furniture should be made for inadequate accounting for depreciation and insufficient evidence.

311. In light of the above, the Panel recommends compensation in the amount of US$615,000 out of the US$2,113,620 claimed.

H. Ministry of Information

Government Claim No. 16, UNCC Claim No. 5000114

Table 8. Summary Table for Ministry of Information

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Tangible property			
a) Dar al-Athar al-Islamiyya collection	60,206,952	20,235,000	312-324
Other losses			
a) Costs to recover the Dar al-Athar collection from Iraq	656,862	439,000	325-327
b) Costs to value the Dar al-Athar collection	172,793	96,000	328-333
Sub-total	829,655	535,000	
Total	61,036,607	20,770,000	
Interest	9,699,920		

1. Other tangible property - US$60,206,952

(a) Dar al-Athar al-Islamiyya collection - US$60,206,952 73/

Emeralds - US$53,500,000
Other works of art - US$6,706,952

312. The Ministry of Information ("MoInf") is responsible, amongst other things, for the Kuwait National Museum.

313. At the time of Iraq's invasion and occupation of Kuwait, the Kuwait National Museum was exhibiting the Dar al-Athar al-Islamiyya collection (the "Collection") pursuant to a loan agreement with the private owners of the Collection. 74/ The majority of the Collection was moved to Iraq during Iraq's occupation of Kuwait. Some of the pieces that remained in Kuwait were destroyed by fire.

314. The majority of the Collection was returned after liberation to Kuwait pursuant to UNROP. 75/ However, a number of the pieces returned had been damaged during their transport to, and storage in, Iraq. Furthermore, some pieces in the Collection were never recovered and others were destroyed in the fire mentioned at paragraph 313 above.

315. The loan agreement between MoInf and the private owners of the Collection provided that MoInf was liable for damage to the Collection, including damage from looting, confiscation, fire and war. A court in

Kuwait has found MoInf liable under the loan agreement for the losses. 76/ The Panel therefore finds that, although MoInf is not the owner of the Collection, it has standing to bring this claim.

316. The claim comprises US$53,500,000 for the loss of three emeralds and US$6,706,952 for the loss of, and damage to, other works of art.

317. MoInf has calculated the value of those pieces of the Collection that were lost by reference to its estimate of the price that would be paid by a buyer at an auction (the "buyer's price"). While the Panel agrees that the value should be measured by reference to auction prices, it notes that the price paid by a buyer at such an auction is always in excess of the amount eventually received by the seller (the "seller's price"). 77/ The Panel finds that the valuation of the lost pieces should be by reference to the seller's, rather than the buyer's, price. 78/

318. MoInf supported its claim for the loss of the three emeralds with two expert opinions, each of which considered the buyer's price of the emeralds, by comparing them with other emeralds sold at public auction in recent years. The Panel commissioned its own expert opinion on the value of the emeralds, which applied a similar valuation methodology 79/ and which concluded that MoInf's claim significantly overstated their value. Having considered all of the opinions before it, the Panel finds that MoInf's claim is overstated. The Panel has therefore made adjustments to correct that overstatement and for insufficient evidence and recommends compensation in the amount of US$16,700,000 out of the US$53,500,000 claimed in respect of the lost emeralds.

319. MoInf claims the cost of the repair and the decrease in the value of the other works of art that were returned in a damaged condition. This decrease in value was measured as the estimated pre-invasion buyer's price minus the estimated buyer's price after repair.

320. While the Panel agrees that MoInf should be awarded compensation for both the costs of repair and the decrease in value, it notes that the pieces returned in a damaged condition are being repaired and will remain part of the Collection. As such, the Panel finds that the decrease in value should be measured by reference to the seller's, rather than the buyer's, price.

321. For each piece returned in a damaged condition, the Panel considered whether the repairs undertaken, or planned to be undertaken, were economic in the sense that they resulted, or would result, in an increase in the value of the piece (using the seller's price) at least equal to the repair costs. The Panel finds that uneconomic repairs are only justifiable where

the piece was so unique that it could not be replaced. The Panel finds that none of the items in the Collection was so unique.

322. In the case of uneconomic repairs to items that were not unique, the duty of mitigation would require MoInf to purchase a replacement item, provided that the cost of replacing the item (using the buyer's price) is less than the sum of the cost of repair and the decrease in value (using the seller's price). The Panel has therefore made adjustments where uneconomic repairs have been undertaken or are planned to be undertaken equal to the difference, if any, between the sum of the cost of repair and the decrease in value (using the seller's price) and the cost of replacing the item (using the buyer's price).

323. In its supplemental submission of claim, MoInf disclosed that a dagger included within the claim had been recovered when presented for sale at Sotheby's in 1997. The Panel has therefore made an adjustment equal to the amount claimed for this dagger. The Panel finds that an adjustment should also be made for an overstatement in the time MoInf estimated would be required to re-catalogue and re-arrange a large number of books that were returned by Iraq.

324. In light of the above, and an adjustment for insufficient evidence, the Panel recommends compensation in the amount of US$3,535,000 out of the US$6,706,952 claimed in respect of the other works of art.

2. Other losses - US$829,655

(a) Costs to recover the Dar al-Athar collection from Iraq - US$656,862

325. The Panel recommends that compensation be awarded for the reasonable cost of retrieving pieces of the Collection and other pieces removed from the Kuwait National Museum, because such retrieval was required as a direct result of the transfer of the pieces to Iraq. 80/ Furthermore, the retrieval acted to mitigate the losses from the Kuwait National Museum. 81/ The Panel finds that the time spent on the retrieval of the pieces was reasonable.

326. The retrieval team was not selected by a competitive procurement procedure. The Panel has made an adjustment for the resultant excess costs incurred for the packing of the pieces and their transport to Kuwait. The Panel has also made an adjustment to reflect the fact that the claim includes a "contingency item" to which no expenditure is allocated.

327. In light of the above, the Panel recommends compensation in the amount of US$439,000 out of the US$656,862 claimed.

(b) Costs to value the Dar al-Athar collection - US$172,793 82/

328. MoInf seeks compensation for the costs of preparing a report on the damage to the Collection, producing an inventory of the Collection for the purposes of the retrieval of the pieces from Iraq, and producing a report on the retrieval of the pieces from Iraq.

329. The report on the damage to the Collection appears to have been produced for the private owners of the Collection for the purpose of their claim against MoInf for the damage to the Collection. Further, the court decision discussed at paragraph 315 above awarded the amount claimed for this loss element against MoInf. The Panel therefore recommends that compensation be awarded for the cost of producing this report.

330. The Panel finds that an inventory for the purposes of the retrieval of the pieces from Iraq was required because the original records of the Collection were missing as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that compensation be awarded for the costs of producing the inventory.

331. The Panel also finds that producing the report on the retrieval of the pieces from Iraq was an integral part of the mission to retrieve them, and therefore recommends that compensation be awarded for the costs of producing the report.

332. Under an agreement in force before Iraq's invasion and occupation of Kuwait and which continued after liberation, MoInf paid a monthly management fee to a company for services in relation to the Collection. Some of the costs claimed for the preparation of the report on the damage to the Collection and the report on the retrieval of the pieces from Iraq were amounts paid under this agreement and thus would have been incurred in the absence of Iraq's invasion and occupation of Kuwait. There is no indication that MoInf paid any additional fees to the company to compensate for the time spent by the company on the two reports. The Panel therefore finds that an adjustment should be made equal to the amount of the losses claimed that would have been incurred in any event.

333. In light of the above, the Panel recommends compensation in the amount of US$96,000 out of the US$172,793 claimed.

I. Ministry of Public Works (Mishref Neighborhood Center)

Government Claim No. 17, UNCC Claim No. 5000115

Table 9. Summary Table for Ministry of Public Works (Mishref Neighborhood Center)

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Contract			
a) Mishref neighborhood center	4,380,588	3,213,000	336-337
b) Kuwait University	7,660,183	2,582,000	338-339
Sub-total	12,040,771	5,795,000	
Real property			
a) Old Sief Palace	5,952,505	2,321,000	340-342
Other tangible property			
a) Government Testing Center	9,560,898	3,216,000	343-346
b) Computer department	8,115,250	1,074,000	347-350
c) General and technical stores	3,471,355	1,674,000	351-353
d) Office furniture and equipment	2,033,852	968,000	354-356
e) Heavy equipment	3,765,173	1,339,000	357-359
Sub-total	26,946,528	8,271,000	
Payment or relief to others			
a) Payment of salaries and bonuses	23,609,806	8,670,000	360-365
Business transaction or course of dealing			
a) Government Testing Center lost revenue	7,005,500	0	366-371
Other losses			
a) Government Testing Center lost research	3,891,254	430,000	372-373
Total	79,446,364	25,487,000	
Interest	12,625,440		

1. Contract - US$12,040,771

(a) Introduction

334. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 83/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

335. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the

losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Mishref neighborhood center - US$4,380,588

336. MPW asserts that two contracts, in relation to the construction of a number of buildings at Mishref, were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 335 above.

337. In light of the above, the Panel recommends compensation in the amount of US$3,213,000 out of the US$4,380,588 claimed.

(c) Kuwait University - US$7,660,183

338. MPW asserts that five contracts, in relation to the construction of four buildings for Kuwait University, were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 335 above.

339. In light of the above, the Panel recommends compensation in the amount of US$2,582,000 out of the US$7,660,183 claimed.

2. Real property - US$5,952,505

(a) Old Sief Palace - US$5,952,505

340. MPW seeks compensation for damage to Old Sief Palace, the oldest building in Kuwait. After liberation, KERO performed some emergency repairs to the palace. At the time it submitted its claim, MPW had not started the permanent repairs to the palace, and therefore claims its estimate of those repair costs.

341. The Panel finds that an adjustment for inadequate accounting for depreciation should be made to the costs of repair claimed and, recognising the building's great historical significance to Kuwait, has adopted a useful life of 350 years for the relevant calculation. The Panel finds that further adjustments should be made for saved expenses and insufficient evidence.

342. In light of the above, the Panel recommends compensation in the amount of US$2,321,000 out of the US$5,952,505 claimed.

3. Other tangible property - US$26,946,528

(a) Government Testing Center - US$9,560,898

343. MPW seeks compensation for the loss of laboratory supplies, glassware, chemicals and sophisticated technical equipment (including fourteen drilling rigs). Before Iraq's invasion and occupation of Kuwait, these items were used to test building materials and soil samples from construction sites.

344. At the time MPW filed its claim, it had replaced only two of the lost drilling rigs. It therefore valued its loss on the basis of the unit price paid for the two replacements. MPW replaced two more of the lost drilling rigs in 1995 and a further two in 1996. The Panel finds that a lower unit price would have been obtained had MPW placed a single order for the replacement drilling rigs and has made an appropriate adjustment. 84/

345. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

346. In light of the above, the Panel recommends compensation in the amount of US$3,216,000 out of the US$9,560,898 claimed.

(b) Computer department - US$8,115,250

347. MPW seeks compensation for the loss of computer equipment and technical documents.

348. MPW asserts that the loss of the technical documents means that it will have to re-develop many of its computer systems. It therefore claims the historic cost of the labour used to initially develop those systems. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information. However, the Panel finds that an adjustment should be made for economies of re-creation.

349. The Panel finds that adjustments should also be made for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

350. In light of the above, the Panel recommends compensation in the amount of US$1,074,000 out of the US$8,115,250 claimed.

(c) General and technical stores - US$3,471,355

351. MPW seeks compensation for the loss of spare parts, office supplies and construction materials from five storage locations.

352. The Panel finds that an adjustment should be made to reflect the shrinkage (that is, pilferage or erroneous bookkeeping) and obsolescence that would have occurred in the stores' contents in the absence of Iraq's invasion and occupation of Kuwait. Adjustments should also be made for saved expenses and insufficient evidence.

353. Accordingly, the Panel recommends compensation in the amount of US$1,674,000 out of the US$3,471,355 claimed.

(d) Office furniture and equipment - US$2,033,852

354. MPW seeks compensation for the loss of its office furniture and equipment.

355. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

356. Accordingly, the Panel recommends compensation in the amount of US$968,000 out of the US$2,033,852 claimed.

(e) Heavy equipment - US$3,765,173

357. MPW seeks compensation for the loss of cranes, bulldozers, trucks, graders, and other heavy equipment. 85/

358. MPW valued its loss by reference to its estimate of the replacement cost of each piece of heavy equipment that was lost. It then applied a depreciation factor to each of these values to reflect that the piece of heavy equipment in question was not new at the time of Iraq's invasion and occupation of Kuwait. While the Panel agrees with this method of valuation, it has made adjustments to reflect some errors in MPW's estimate of the replacement costs and the subsequent effect of these errors on MPW's depreciation adjustments. The Panel finds that further adjustments should be made for incorrect valuation of KERP assets, saved expenses and insufficient evidence.

359. In light of the above, the Panel recommends compensation in the amount of US$1,339,000 out of the US$3,765,173 claimed.

4. Payment or relief to others - US$23,609,806

(a) Payment of salaries and bonuses - US$23,609,806

360. MPW seeks compensation in the amount of US$23,431,908 for relief paid to employees.

361. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

362. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

363. MPW also seeks compensation in the amount of US$177,898 for bonuses paid to 309 employees for their work on Kuwait's sewerage system during Iraq's occupation of Kuwait. The Panel finds that the decision to make the payments was made well after liberation pursuant to a general power granted by a 1977 Ministerial Order. The payments were therefore not a direct result of Iraq's invasion and occupation of Kuwait and the Panel recommends that no compensation be awarded for them.

364. The Panel also finds that an adjustment should be made for insufficient evidence.

365. In light of the above, the Panel recommends compensation in the amount of US$8,670,000 out of the US$23,609,806 claimed.

5. Business transaction or course of dealing - US$7,005,500

(a) Government Testing Center lost revenue - US$7,005,500

366. Prior to Iraq's invasion and occupation of Kuwait, the Government Testing Center earned revenue from companies which paid fees for the testing of building materials and soil samples. MPW claims the loss of this revenue for the period 1 June 1991 to 30 June 1998, 86/ calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned (although it should be noted that, for fiscal years 1994 to 1998 inclusive, MPW's claim relies on estimates of the revenue to be earned).

367. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-

liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 87/

368. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1995 and has made an appropriate adjustment to the amount claimed. An adjustment is also required to reflect the difference between MPW's estimate of the revenue it would earn for fiscal years 1994 and 1995 and the revenue that was, in fact, earned.

369. The Panel has also made adjustments to reflect the revenue that would have been paid by other Government departments and the fact that some of the work lost by MPW after liberation was performed by Kuwait University, another Government department.

370. Finally, the Panel sought information from MPW as to the costs involved in the generation of the Government Testing Center revenue. This information disclosed that the expenses that would have been incurred in earning the lost revenue for the period 2 August 1990 until 30 June 1995 exceeded that lost revenue.

371. Accordingly, the Panel does not recommend any compensation for this loss type.

6. Other losses - US$3,891,254

(a) Government Testing Center lost research - US$3,891,254

372. MPW asserts that vandalism at the Government Testing Center resulted in the loss of ten years' worth of research into the effects of Kuwait's extreme climate on building materials. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information. However, the Panel finds that adjustments should be made to reflect the fact that a large percentage of the lost research was, at the time of Iraq's invasion and occupation of Kuwait, readily available in technical publications and has made an adjustment for economies of re-creation in this regard. The Panel finds that an adjustment should also be made for insufficient evidence.

373. In light of the above, the Panel recommends compensation in the amount of US$430,000 out of the US$3,891,254 claimed.

J. Ministry of Defense (Naval Base)

Government Claim No. 22, UNCC Claim No. 5000139

Table 10. Summary Table for Ministry of Defense (Naval Base)

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	63,453,966	39,946,000	374-380
Total	63,453,966	39,946,000	
Interest	10,083,880		

1. Real property - US$63,453,966 88/

374. The Ministry of Defense ("MoD") is, amongst other things, responsible for the Base 89/ and related naval facilities. MoD asserts that, prior to Iraq's invasion and occupation of Kuwait, the Base consisted of approximately 90 on-shore buildings, which included naval headquarters, marine works, warehouses and storage facilities. An ammunition and missile storage depot ("Ammunition Depot"), which included 31 "igloos" for the storage of ammunition and missiles, is located some five kilometres from the Base. The marine works consisted of vessel repair facilities and an artificial harbour. The vessel repair facilities included a ship lift for lifting vessels out of the water for repairs, a 10-ton capacity crane for transferring cargo to and from vessels, and a system of carriages on rails for transporting vessels to and from repair sites. The artificial harbour facilities included a fixed jetty and one floating jetty. In addition, MoD also maintained fixed jetties on various islands in the Persian Gulf.

375. MoD asserts that during the occupation period the Iraqi forces occupied the Base and Ammunition Depot. As a result, it claims, buildings were damaged, their contents removed 90/ and explosives were detonated around the 10-ton capacity crane, causing it to collapse onto a jetty. MoD further claims that direct missile strikes from the Allied Coalition Forces also seriously damaged or destroyed the Ammunition Depot, jetties, a ship lift and various on-shore buildings at the Base.

376. In a technical mission to Kuwait undertaken in June 1999, certain of the on-shore facilities at the Base were inspected on the Panel's behalf.

377. MOD entered into four contracts for the repair and replacement of the on-shore buildings and marine facilities at the Base, the Ammunition Depot and certain of the jetties, three of which were awarded using MoD's Military Engineering Projects Department's established contracting procedures. 91/ The Panel finds that the costs incurred in respect of the fourth contract were reasonable and the absence of such procedures did not

lead to increased costs. Accordingly, the Panel does not recommend that an adjustment be made in this regard.

378. The Panel finds that MoD has saved maintenance expenses from 2 August 1990 until the dates upon which the relevant repair or replacement was completed 92/ or the dates upon which it would be reasonable, in all the circumstances, to expect the relevant repair or replacement to have taken place.

379. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

380. In light of the above, the Panel recommends compensation in the amount of US$39,946,000 out of the US$63,453,966 claimed.

K. Kuwait University

Government Claim No. 23, UNCC Claim No. 5000140

Table 11. Summary Table for Kuwait University

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	224,753,561	107,930,000	381-386
Payment or relief to others			
(a) Relief paid to employees	36,272,151	12,616,000	387-390
(b) Advance lease payments	3,353,891	3,270,000	391-394
Sub-total	39,626,042	15,886,000	
Total	264,379,603	123,816,000	
Interest	42,015,200		

1. Other tangible property - US$224,753,561

381. Kuwait University ("KU") is Kuwait's national university. KU claims that Iraqi troops occupied its properties, and that, as a result, its tangible assets were lost or destroyed together with the majority of its pre-invasion inventory records. 93/ KU claims that the assets lost include furniture, office equipment, office stationery, computers and accessories, laboratory equipment, its library collection, kitchen tools and various miscellaneous items.

382. In its response to Procedural Order 1, Iraq asserted that complete inventories and records did exist which show the extent of supplies and equipment at KU as at 2 August 1990. The Panel requested Iraq to produce the inventories, and Iraq produced part of an inventory of the College of Science at KU in response. KU used a variety of methods of valuation including estimated replacement cost, depending upon the availability of information, which methods the Panel finds were reasonable in the circumstances. However, the Panel finds that the measure of inflation applied in estimating replacement costs was overstated and has made an adjustment to correct the overstatement.

383. The Panel notes that although replacement purchases were not always made using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs.

384. The Panel finds that adjustments should be made for enhancement in respect of the amounts claimed for computers and laboratory equipment, and for inadequate accounting for depreciation in respect of the amounts

claimed for office stationery, the library collection, computers and laboratory equipment.

385. The Panel finds that further adjustments should be made for saved expenses and for insufficient evidence.

386. In light of the above, the Panel recommends compensation in the amount of US$107,930,000 out of the US$224,753,561 claimed.

2. Payment or relief to others - US$39,626,042

(a) Relief paid to employees and social security - US$36,272,151

387. KU seeks compensation in the amount of US$36,272,151 for relief paid to employees, to include social security contributions of US$4,731,150 paid by KU in respect of its employees.

388. The Panel finds, in accordance with paragraph 41 of the First "F3" Report (repeated as paragraph 41 of the annex), that sums paid by way of social security contributions are not compensable.

389. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of relief paid to employees (excluding the sums paid by way of social security contributions).

390. In light of the above, the Panel recommends compensation in the amount of US$12,616,000 out of the US$36,272,151 claimed.

(b) Advance lease payments - US$3,353,891

391. KU seeks compensation for pre-paid rent on housing that was rented for employees prior to Iraq's invasion and occupation of Kuwait. KU seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990, save for one short lease, for which it claims the pre-paid rent referable to the period 2 August 1990 to 30 September 1990.

392. The Panel recommends that, in accordance with the principles set out at paragraph 84 of the First "F3" Report, compensation be awarded for that portion of the pre-paid rent referable to the period that KU was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990, save for the short lease for which the period is 2 August 1990 to 30 September 1990.

393. The Panel finds that an adjustment should be made for insufficient evidence.

394. In light of the above, the Panel recommends compensation in the amount of US$3,270,000 out of the US$3,353,891 claimed.

L. Ministry of Oil

Government Claim No. 27, UNCC Claim No. 5000144

Table 12. Summary Table for Ministry of Oil

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	970,814	530,000	395-398
Payment or relief to others	4,066,515	1,620,000	399-402
Other losses			
a) Lost research data	2,515,531	510,000	403-409
b) Study regarding lost oil income	330,048	330,048	410-412
Sub-total	2,845,579	840,048	
Total	7,882,908	2,990,048	
Interest	1,252,800		

1. Other tangible property - US$970,814 94/

395. The Ministry of Oil ("MoO"), on behalf of the State of Kuwait, supervises Kuwait's oil industry in its exploration, drilling, refining and production operations, its export of oil and petroleum products and its conservation of Kuwait's oil resources. MoO is also involved in setting Kuwait's oil production levels and approves the drilling of oil wells at particular sites.

396. MoO seeks compensation for the loss of office furniture and fixtures, office equipment, and reference and technical books and periodicals. The Panel notes, following Iraq's response to Procedural Order 1, that various items were returned through UNROP, but finds that MoO has not made a claim for any of the items concerned.

397. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement, saved expenses and insufficient evidence.

398. In light of the above, the Panel recommends compensation in the amount of US$530,000 out of the US$970,814 claimed.

2. Payment or relief to others - US$4,066,515

(a) Relief paid to employees - US$4,066,515

399. MoO seeks compensation in the amount of US$4,066,515 for relief paid to employees.

400. The response of the Government to the Panel's questions regarding the Social Security Fund 95/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

401. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees. 96/

402. In light of the above, the Panel recommends compensation in the amount of US$1,620,000 out of the US$4,066,515 claimed.

3. Other losses

(a) Lost research data - US$2,515,531

403. MoO claims that, starting in 1964, it began commissioning a series of oil reserve and geological studies to assist it in managing Kuwait's oil resources and that four such studies commissioned between 1974 and 1980 were lost or destroyed during Iraq's invasion and occupation of Kuwait. MoO asserts that it could not obtain copies of the studies after liberation from any other source. (The consultants who originally produced the studies were not allowed to retain copies after completion of their contract.) The Panel accepts MoO's assertions.

404. The Panel finds, in accordance with the principles set out at paragraphs 23 to 28 above, that the loss of the studies is compensable, subject to verification and valuation.

405. MoO claims that, despite the age of the studies, the information in them was nonetheless used on a regular basis, in monitoring Kuwait's oil production, setting oil production levels, and deciding whether to approve the drilling of oil wells at various sites. In addition, MoO claims that the studies provided an historical record of Kuwait's oil resources and geological formations.

406. In order to ascertain what would have been the continuing value of the lost reports to MoO beyond the date of Iraq's invasion and occupation of Kuwait, the Panel issued Procedural Order 11 in September 1999 seeking details, amongst other matters, of the purposes for which the studies had originally been commissioned and whether those purposes had been fulfilled by the date of Iraq's invasion and occupation of Kuwait. In light of the responses received, the Panel finds that MoO had received the main benefit of the studies prior to Iraq's invasion and occupation of Kuwait. However, the Panel finds that the studies still retained a secondary use for the monitoring and setting of production levels, and accordingly recommends that compensation be awarded for the loss of the corresponding benefit after Iraq's invasion and occupation of Kuwait and for their archival value.

407. The Panel finds that historic cost, adjusted for inflation, is an appropriate measure of loss sustained, as it is impossible to reproduce or replace the studies. However, the Panel has adjusted the amount claimed so as to reflect the benefits derived by MoO from the studies prior to Iraq's invasion and occupation of Kuwait.

408. The Panel finds that further adjustments should be made for overstatement and insufficient evidence.

409. In light of the above, the Panel recommends compensation in the amount of US$510,000 out of the US$2,515,531 claimed.

(b) Study regarding lost oil income - US$330,048 97/

410. MoO also claims for the cost incurred in commissioning external consultants to conduct a post-liberation study to analyse Kuwait's loss of oil revenues resulting from Iraq's invasion and occupation of Kuwait.

411. The Panel finds that the study's primary purpose was loss or damage assessment (and not for claims preparation purposes), and therefore that the reasonable costs incurred in retaining the consultants are a direct loss.

412. In light of the above, the Panel recommends compensation in full in the amount of US$330,048.

M. Kuwait Municipality

Government Claim No. 30, UNCC Claim No. 5000147

Table 13. Summary Table for Kuwait Municipality

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Public service expenditures			
a) Cleaning contracts	89,717,109	66,917,000	413-417
b) Removal of damaged vehicles	1,798,058	629,000	418-421
c) Repair and replacement of traffic signs	1,490,539	364,000	422-424
Sub-total	93,005,706	67,910,000	
Payment or relief to others	81,173,333	30,034,000	425-429
Real property	6,427,598	831,000	430-433
Other tangible property	13,226,204	5,816,000	434-438
Income producing property	1,302,306	0	439-441
Contract	1,324,124	611,000	444-448
Total	196,459,271	105,202,000	
Interest	31,221,400		

1. Public service expenditures - US$93,005,706

(a) Cleaning contracts - US$89,717,109

413. Kuwait Municipality (the "Municipality") provides municipal services to, and plans for the orderly growth of, Kuwait City. During 1991, the Municipality entered into thirteen contracts to clean Kuwait City and remove rubbish that had accumulated during Iraq's invasion and occupation of Kuwait.

414. The Panel finds that the accumulation of rubbish and the resultant need to engage cleaning contractors were a direct result of Iraq's invasion and occupation of Kuwait.

415. The Panel has considered the method adopted by the Municipality in awarding these contracts. It is not clear from the evidence and information before the Panel whether any of the contracts was awarded using competitive procurement procedures. The Municipality also incurred higher charges for the services provided pursuant to the thirteen contracts than it had paid for equivalent cleaning services before Iraq's invasion and occupation of Kuwait. This is because the contracts were generally negotiated and awarded before liberation, without precise knowledge of the services that would be required. Finally, based on estimates of the work required, and in order to justify the costs of bringing in personnel and

equipment, all of the contracts were awarded for a term of one year. The Panel finds that, given the risk to public health from the accumulated rubbish, the contracting procedure adopted was reasonable in all the circumstances. 98/

416. The Panel finds, however, that adjustments should be made for saved expenses (being the amount that the Municipality would have incurred on cleaning costs for the relevant period in the absence of Iraq's invasion and occupation of Kuwait) and insufficient evidence.

417. Accordingly, the Panel recommends compensation in the amount of US$66,917,000 out of the US$89,717,109 claimed.

(b) Removal of damaged vehicles - US$1,798,058

418. After liberation, the Municipality engaged a contractor to collect the thousands of damaged and/or abandoned vehicles on the streets of Kuwait City and convert them into scrap metal. The Municipality claims the difference between what it paid the contractor and what it received for selling the scrap metal.

419. The Panel finds that the decision to engage a contractor for the removal of such vehicles was a direct result of Iraq's invasion and occupation of Kuwait.

420. Pursuant to an order of the Council of Ministers (made in 1988), the Government was authorised to negotiate with one company alone for the sale of salvage materials. Although the contract was therefore not awarded using competitive procurement procedures, the Panel finds that the cost incurred was reasonable and would not have been reduced had competitive procurement procedures been adopted. However, an adjustment should be made for insufficient evidence.

421. Accordingly, the Panel recommends compensation in the amount of US$629,000 out of the US$1,798,058 claimed.

(c) Repair and replacement of traffic signs - US$1,490,539

422. The Municipality asserts that, after liberation, it entered into two contracts for the repair, replacement and cleaning of traffic signs that were damaged during Iraq's invasion and occupation of Kuwait.

423. The Panel finds that the damage to the signs and resultant need to engage a contractor to repair, replace or clean them were a direct result of Iraq's invasion and occupation of Kuwait. However, adjustments should be made for saved expenses and insufficient evidence.

424. Accordingly, the Panel recommends compensation in the amount of US$364,000 out of the US$1,490,539 claimed.

2. Payment or relief to others - US$81,173,333

(a) Relief paid to employees - US$81,173,333

425. The Municipality seeks compensation in the amount of US$81,173,333 for relief paid to employees.

426. The response of the Government to the Panel's questions regarding the Social Security Fund 99/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

427. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

428. The Panel also finds that an adjustment should be made for insufficient evidence.

429. In light of the above, the Panel recommends compensation in the amount of US$30,034,000 out of the US$81,173,333 claimed.

3. Real property - US$6,427,598

430. The real property losses of the Municipality arise out of damage to, and destruction of, three facilities on Failaka Island and various facilities on the mainland.

431. The facilities on Failaka Island will not be repaired or replaced. Nevertheless, on the basis set out at paragraph 66 of the First "F3" Report, the Panel recommends that compensation be awarded for the damage to them and that the compensation be measured by the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place. However, the Panel finds that an adjustment to the claim for the facilities on Failaka Island should be made for insufficient evidence.

432. As for the facilities on the mainland, the Panel finds that the Municipality's savings in maintenance expenditure during the occupation and emergency periods exceed its claim for the facilities. As a result, the Panel does not recommend any compensation for the facilities on the mainland.

433. Accordingly, the Panel recommends compensation in the amount of US$831,000 out of the US$6,427,598 claimed.

4. Other tangible property - US$13,226,204

Heavy equipment - US$8,957,283

Vehicles - (US$39,461) 100/

Computers - US$2,346,546

Office equipment and furniture - US$1,961,836 101/

434. The Municipality seeks compensation for loss of the above items of tangible property.

435. Some of the lost heavy equipment, office equipment and furniture will not be replaced because outside contractors are now hired to undertake most of the work previously performed with the aid of the heavy equipment lost and because the Municipality has fewer employees than before Iraq's invasion and occupation of Kuwait. Nevertheless, on the basis set out at paragraph 66 of the First "F3" Report, the Panel recommends that compensation be awarded for the loss of these assets.

436. The claim for the lost computers includes an amount for training on, and technical support for, the post-liberation replacements. The Panel finds that only insignificant technical advancements had been made since the initial purchase of the computers and therefore does not recommend any compensation for the training and technical support.

437. The Panel also finds that adjustments should be made for enhancement, inadequate accounting for depreciation, saved expenses, incorrect valuation of KERP assets and insufficient evidence.

438. Accordingly, the Panel recommends compensation in the amount of US$5,816,000 out of the US$13,226,204 claimed.

5. Income producing property - US$1,302,306

(a) Slaughterhouse rental income - US$1,302,306

439. Prior to Iraq's invasion and occupation of Kuwait, the Municipality earned revenue from the rental of five slaughterhouses. The Municipality claims that it was unable to collect rent for the occupation and emergency periods because its tenants ceased doing business. 102/

440. The Panel finds that loss of revenue is, in principle, compensable, 103/ subject to deductions for exceptional post-liberation revenue, for

revenue that would have been paid by other Government departments and for saved expenses. 104/ The Panel sought information from the Municipality as to the number of employees involved in the generation of the slaughterhouse revenue. This disclosed that the salary expense not incurred by the Municipality over the occupation and emergency periods exceeded the loss of revenue claimed.

441. Accordingly, the Panel does not recommend any compensation for this loss type.

6. Contract - US$1,324,124

(a) Introduction

442. The Municipality claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. In the latter case, the Municipality asserts that the additional costs are to cover increased costs in the post-liberation period.

443. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Contract interruption loss - US$1,324,124 105/

444. At the time of Iraq's invasion and occupation of Kuwait, the Municipality was party to nine construction and maintenance contracts, all of which were interrupted by Iraq's invasion and occupation of Kuwait. Seven of these contracts were resumed after liberation. 106/ The Panel has calculated the amount of the losses claimed in relation to these seven contracts that is attributable to the factors set out at paragraph 443 above.

445. Accordingly, the Panel recommends US$412,000 in respect of the contracts resumed after liberation.

446. The Panel finds that the remaining two contracts were not abandoned as a direct result of Iraq's invasion and occupation of Kuwait. 107/ As set out at paragraph 39 above, the Panel recommends that the appropriate compensation in such a case is the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait at such time as

it would be reasonable, in all the circumstances, to expect repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 108/

447. Accordingly, the Panel recommends US$199,000 for the two contracts abandoned after liberation.

448. In light of the above, the Panel recommends a total of US$611,000 out of the US$1,324,124 claimed.